

LAND TITLES IN THE LATE DISPUTED TERRITORY OF MAINE.

[To accompany Bill S. No. 191.]

APRIL 13, 1860.

Mr. WALTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate bill No. 191, "to provide for the quieting certain land titles in the late disputed territory in the State of Maine, and for other purposes," have carefully considered the same, and report :

That previous to 1832 and to this time, persons named in this bill were owners of 32,040 acres of land, in the towns of Plymouth and Eaton, in the State of Maine, the titles thereto having been granted in 1807 and 1808, by the State of Massachusetts, when these lands were within her undisputed jurisdiction. It appears that from 1827, by request of the United States, the jurisdiction of Maine over these lands was partially, and from 1831 to 1839 wholly, suspended.—(See Appendix A.) That in consequence of such suspension, and while in fact New Brunswick had placed an officer of her own in charge of the lands, styling himself "justice of the peace for the county of Carleton," (in New Brunswick,) and "warden of the disputed territory," sundry persons entered upon the lands without the consent of the owners, and removed the most valuable timber therefrom, for which a duty of eight shillings per ton was exacted by this New Brunswick "warden;" and that 8,430 acres in these townships were actually occupied and improved by such persons for more than six years before the date of the treaty of Washington, (1842,) by virtue of which the lands again fell within the jurisdiction of Maine. These persons are still in possession of the 8,430 acres so occupied and improved, and claim that, by the fourth article of the treaty of Washington, they have acquired the right to a "release of the title thereto." The proprietors under the Massachusetts grant consent to execute a release of their title to the persons in possession on receiving from the United States fair compensation for the land and timber; and the proprietors in addition claim compensation for the loss of timber on the remaining 23,610 acres which are still their property.

Release of title to land.

The first and second sections of the bill provide payment for the 8,430 acres of land, including the timber taken therefrom, being that part of the Eaton and Plymouth grants which was occupied and improved by the persons now in possession, who claim a release of the title thereto by virtue of the fourth article of the treaty of Washington, 9th of August, 1842. This article is in these words:

“All *grants of land* heretofore made by either party, within the limits of the territory which by this treaty falls within the dominions of the other party, shall be held valid, ratified and confirmed to the *persons in possession under such grants*, to the same extent as if such territory had by this treaty fallen within the dominions of the party by whom such grants were made; and *all equitable possessory claims*, arising from a *possession and improvement* of any lot or parcel of land by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this treaty, shall, in like manner, be deemed valid, and be confirmed and quieted by a release, to the person entitled thereto, of the title to such lot or parcel of land, so described as best to include the improvements made thereon; and in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them, respectively, which has heretofore been in dispute between them.”

Looking solely to the fairest and most obvious meaning of the article, there seems to be a single purpose, to wit: to quiet all the settlers on the lands to which there had been conflicting claims of jurisdiction, whether the settlers held by grants, by possession and improvement for six years, or by whatever claim might grow out of possession for a shorter term; and to do all this by a single rule, clearly expressed and absolute, to wit: *possession*.

Laborious investigation and discussion of the history of the negotiation, (see Appendix A, B, C,) and of the practical construction put upon the treaty by the legislatures of Maine and Massachusetts, (Appendix D and E,) by the courts of Maine, (Appendix E,) and by Congress itself in the case of Josiah S. Little, (11th U. S. Statutes, 472,) have confirmed that impression, and led to the following conclusions:

1. That the fourth article of the treaty confirms all grants, and quiets all equitable claims, to the persons in possession at its date, and to those persons only; the design being to prevent litigation that would grow out of grants and claims springing from the conflicting jurisdictions and laws of Maine and New Brunswick, and to satisfy all persons whose national relations were changed by the conventional boundary line.

2. That citizens of New Brunswick, who had been in possession of lands in Plymouth and Eaton townships for six years and improved them, are entitled, by the treaty, “to a release of the title” to so much of the lands as will best embrace their improvements.

3. That the proprietors of these townships, under the Massachusetts grant, whose lands have been thus taken by the federal government for an important public purpose, are entitled to just compensation.

4. That the settlers on the lands have a right to ask and expect of Congress an act to perfect their claims under the treaty, inasmuch as, by the very terms of the fourth article, the federal government was pledged, as one of the contracting parties, to execute that article "upon the most liberal principles of equity."

A majority of the committee therefore believe that the parties named in the Senate bill have a clearly just claim, which has already been too long delayed, and they regret that this decision has not been unanimous. It has been our duty to the government, however, to consider all objections, and now it is our duty, to the claimants at least, to reply to all that we deem material.

It has been generally agreed in the committee, perhaps unanimously, that the treaty was intended to cover all grants and possessory claims on the public or unappropriated lands of Maine and Massachusetts. Indeed these States have never doubted that; but on the contrary, immediately after the ratification of the treaty, in 1843-'44, a joint commission was appointed, with power to set off to the claimants in possession all lands claimed under grants from New Brunswick—all lands claimed by more than six years' possession and improvement, and all lands claimed upon mere settlement; and the land agents were required to execute, and did execute, titles to land owned by Maine and Massachusetts to all these classes of claimants.—(Appendix D.) In 1844 the commissioners for the first time reached the townships of Eaton and Plymouth, where the lands were private property, under grants given by Massachusetts for patriotic and educational purposes, at a time when her title was undisputed, and where a part of the land was claimed, under the treaty, by citizens who had come in from New Brunswick, and were then, as now, in possession. The action of the commissioners was thus stated in their report, which was accompanied by a list of the claimants:

"But the undersigned [commissioners] were of opinion that the fourth article of the treaty *ought not* to be construed to extend to embrace those lands which had been previously granted by the States to corporations or individuals, so as to divest the title from such grantees and give it to persons who had held by mere possession more than six years before the date of the treaty, and that the resolves aforesaid had conferred no power upon the commissioners to set off lots to the settlers upon those townships. Yet the undersigned, at their earnest request, have taken their statements and the proof of their claims, and respectfully submit *whether some provision should not be made further by the legislatures of the two States, or by Congress.*"

It is objected by a minority of the committee that the fourth article of the treaty was not intended to operate on private property, and the above quoted opinion of the commissioners in 1844 is held to be conclusive on that point. We do not concur in this view of the action or the opinion of the commissioners. For the first time they had entered upon private property, and were asked to set off a portion of it

to persons holding by possession adverse to the title. They saw at once that such an act would give rise to a claim upon somebody, by the proprietors, to compensation for private property so set off. It was quite natural, quite prudent, indeed, for the commissioners to endeavor to avoid any such claim against the States which had made them agents, and it is fairly presumable that they entered the best possible plea for declining to set off the lands. What is it? Not that the treaty *does not* embrace private lands; no, but that, in their "opinion," it "*ought not*" to be so construed. Not that *the treaty does not* give rights to the persons in possession; no, but that the resolves under which the commissioners were acting did not give them the power to ascertain those rights—an opinion which is questionable, to say the least, though it is true that the land agents could give deeds for public lands only.—(See resolves in Appendix D.) And finally, they are so strongly impressed with the justice of the claims of the persons in possession, that they conclude to take the proofs of their claims, and "respectfully submit whether some provision should not be made for them by the legislatures of the two States, or by Congress." That is the very point we have been carefully examining, and we think it is properly settled by the bill before us.

But it is plain that the fourth article of the treaty *does* embrace private property. The first clause, indeed, embraces nothing else. It provides that where persons claim under conflicting grants to the same land, the title shall be vested in the claimant who is *in possession*. Though the grantee, who happened to be out of possession at the date of the treaty, had acquired private property from Massachusetts between 1792 and 1827, when both the American title and jurisdiction were undisputed by Great Britain—though the subsequent grant was obtained by the adverse party from New Brunswick, between 1832 and 1839, when by request of the federal government the jurisdiction of Maine was temporarily suspended, and though the land fell by the conventional line of 1842, in Maine, where everybody conceded that it belonged at the date of the Massachusetts grant—yet the treaty divests the older title to private property thus lawfully acquired, and gives that property to the New Brunswick man, who is in possession under a subsequent and, in fact, unlawful title.

We have discovered no good reason for a distinction (except in the *measure* of the claims, as provided in the treaty) between claims to the property of Maine or Massachusetts and property of their citizens, or between claims founded on conflicting titles, where each was acquired with equal good faith, and equitable claims founded on possession and improvement. As to grants, *priority* might have been the treaty rule, or it might have been provided that the grants of the government within whose jurisdiction the land fell by the treaty should determine the title, yet neither of these rules was adopted. But there *was* a good reason why *possession* was made the absolute rule, and that reason applies equally to every class of claims, whether through grants or through possession and improvement, and to each class of property, whether public or private. Indeed, it may well be said that *all* the land was private, in respect to the parties to the treaty, since the ungranted lands in Maine were the property of Maine

or Massachusetts, and not of the United States. As already stated, the history of the negotiation and the subsequent action of Maine and Massachusetts all go to show that the main purpose of the fourth article was to *quiet the persons in possession*; hence *possession* was the only rule for the settlement of all classes of claims. The conventional line set off American citizens to New Brunswick, and British citizens to Maine, and those citizens were in possession of lands derived in good faith from their respective governments, and were relying upon those governments for protection. Some derived titles from grants, and others derived equitable claims from occupation and improvement. We know that citizens of New Brunswick occupied and improved lands in Eaton and Plymouth, under the very eye of the "warden" sent there by New Brunswick to maintain her jurisdiction, and we also know that this "warden" exacted a duty for timber, and seized and sold the timber itself as the property of New Brunswick when the duty had not been paid. Surely it cannot be maintained that the settlers in Eaton and Plymouth would have had no equitable claims upon New Brunswick had the land ultimately fell within her limits. Now, we know more: we know that New Brunswick did not *enter* upon Plymouth and Eaton until the United States had suspended jurisdiction in 1827, and could not have held her jurisdiction nor maintained her warden over these lands between 1832 and 1839, *had not the federal government suspended the jurisdiction of Maine*. Maine, in fact, was prepared to maintain her rights by force, but was prevented by the federal government. When, therefore, these lands again fell to Maine by the conventional line, and the Massachusetts grants were thus revived, it was eminently fit, eminently just, eminently necessary, indeed, for the peace of that community that the federal government should assume all the responsibilities that attached to New Brunswick, *and engage, as by the treaty we think it did engage*, to quiet the settlers in all their claims, whether by grants or possession. The words of the *second clause of the fourth article seem to embrace private lands—all lands*. By no good rule of construction, at least, can they be made to *exclude* private lands. The provision is, that "all equitable possessory claims shall in like manner [*i. e.*, like grants] be deemed valid, and be confirmed and quieted by a release to the person entitled thereto, *of the title* to such lot or parcel of land, so described as best to include the improvements made thereon." The words "release of the title" are certainly broad enough to carry the improved land against all adverse claimants, whether Maine, Massachusetts, or their citizens. If it had been the purpose of the treaty to quiet claims to public lands only, we are confident Mr. Webster would have used terms altogether more felicitous for the purpose.

If any doubt remains, growing out of an opinion of the first commissioners, given for prudential reasons, we think that doubt is removed by the subsequent decision of the supreme court of Maine, and the acquiescence of the legislatures of Maine and Massachusetts, and of the 34th Congress.

Josiah S. Little derived title from a Massachusetts grant to a half township, lying partly in Maine and partly in New Brunswick, according to the conventional line of 1842. On this land was a tenant,

(Watson,) who claimed by a subsequent grant from New Brunswick, and who was in possession at the date of the treaty. The titles of the parties were tried in the supreme court of Maine, in the case of *Little vs. Watson*, reported in 1852, in 32d Maine Reports, page 224. The very point that the treaty does not embrace *private* lands was raised in this case, and it was overruled. Judgment was rendered for the tenant Watson, under his New Brunswick grant, it being held (on the authority of the United States Supreme Court, in 2d Peters, page 314, and 7th Peters, page 51) that the treaty was not executory, but operated *proprio vigore* to take away the title of Little, who was thus left, in the language of the court, to "seek compensation for the loss of his land from the justice of his country."—(Appendix E.) August 18, 1856, Congress passed an act compensating Little for that part of his lost land which fell in Maine by the treaty; and it is understood that Massachusetts paid him for that part of the land which fell within New Brunswick, the latter undoubtedly having been done, for the reason that the United States, as required by the fifth article of the treaty, had paid Maine and Massachusetts for all of their land that had been conceded to New Brunswick.—(Appendix B.)

We concede that the second clause of the fourth article, providing for possessory claims, is simply executory, so far as respects *the mode of procuring releases* of the outstanding title to improved land; but we also think it bars proprietors from ejecting persons who are in possession according to the terms of the treaty; and we are, therefore, not surprised to learn that, in a case arising at *nisi prius* in Aroostook county, Judge Cutter, of the supreme court of Maine, promptly applied the principle of Little's case to a possessory claim, and sustained the party in possession against the grantee. From that decision no appeal was taken, as it was thought by all parties to be the rule of the treaty.

In April, 1854, the legislature of Maine accepted the judicial interpretation of the treaty in Little's case, and appointed a second board of commissioners to set off the improved lands in Eaton and Plymouth to the persons in possession, and notified the President of the United States that Maine would procure a release of the titles, or give public lands in exchange, "whenever Congress shall be ready to make to the State suitable indemnity."—(Resolutions, Appendix F.) The commissioners performed this duty, and reported on the 5th of March, 1855; the claimants are now in possession of the lands so set off, and it only remains for Congress to provide, in some mode, for a release of the title by the Massachusetts grantees. We think Congress cannot require releases without giving just compensation.

The second objection to the bill is that the parties in possession have simply *an equitable claim*, to be judicially determined under the possessory or "betterment" laws of Maine or New Brunswick; and this point has been so far pressed as to conclude, on the supposition that New Brunswick has no possessory laws, and because aliens can acquire no possessory claims in Maine, that therefore the persons in possession *have no rights at all*, and the land must revert to the Massachusetts grantees. This theory leaves a large class of meritorious settlers unprovided for; nay, more: it probably sacrifices the improvements they

have been making for the last twenty-four years. Claimants under grants are to have their land by possession merely, without regard to the legality of the grants under the laws of the country where they fell by the treaty; mere settlers are entitled to the most liberal equity, without regard to any laws at all; and yet claimants by possession and improvement, for more than six years at the date of the treaty, and now for almost a quarter of a century, are remitted to laws of Maine or New Brunswick, if laws there are to meet their case, and with a strong probability that such laws will sacrifice both their land and their improvements. We respectfully submit, that if the possessory clause of the fourth article gives no rights, or none that cannot be judicially determined outside of the treaty, then there was no necessity for that clause. If, however, it be construed so that all parties claiming lands are to stand in court upon the laws of their respective governments, then there is a conflict that *cannot* be judicially determined. By Maine laws, the Massachusetts grant is a bar to all possessory claims by citizens of New Brunswick, and the settlers will therefore lose their improvements; while, on the other hand, by New Brunswick laws, the Massachusetts title is not worth the paper on which it was written, and therefore the Massachusetts grantees must lose their land. Even if there are no possessory laws in New Brunswick, still, inasmuch as the Massachusetts grant is void, nobody could eject the New Brunswick men in possession, unless it be New Brunswick herself. We do not believe it was the purpose of the treaty either to leave New Brunswick a landholder in Maine, or to deprive the settlers of that equity to which they are entitled by more than six years' possession and improvement.

We agree, however, that the claimants to the improved lands have *equitable claims only*; but we think the treaty clearly defines, awards, measures, and guarantees the equity, in language worthy of the pre-eminent lawyer and statesman who drew it.

First, we have a *definition*, to wit: "all equitable possessory claims, arising from a possession and improvement of any lot or parcel of land."

Next, we have a *designation* of the person in whom the equity is, to wit: "by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this treaty."

Next, we have the *mode* in which the equity is to be secured, to wit: "shall in like manner (like grants) be deemed valid, and be confirmed and quieted by a release, to the person entitled thereto, of the title to such lot or parcel of land."

Next, we have the *measure* of the equity, to wit: "so described as best to include the improvements made thereon."

And finally, we have the *guaranty* of the federal government, which is in terms binding upon that government, as one of the contracting parties, to wit: "and in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them, respectively, which has heretofore been in dispute between them."

We have thus given the article of the treaty entirely and consecutively, so far as it relates to possessory claims, and stated the legitimate and full effect of every part of it.

A third objection is that the territory was in dispute, and that persons acquiring titles or claims while the territory was in dispute, must have done so subject to the risks of a final settlement of the question of jurisdiction. It is sufficient to say that, if this view is correct, the fourth article of the treaty had no purpose, and can have no effect. Had it been omitted, all parties *would* have been left precisely as this objection presupposes. The article is there, however; it is part of the supreme law of the land, and we think we are bound to interpret it so as to accomplish all the beneficial purposes for which it seems historically, by its terms, and by all subsequent judicial and legislative interpretations, to have been designed; these were to confirm all grants, and quiet all claims to persons in possession of the land at the date of the treaty. Moreover, the territory was *not* in dispute when Massachusetts made the grant; the United States suffered New Brunswick to *put it* in dispute from 1827 to 1842, and to *put* these possessory claims upon it. The treaty restored the Massachusetts grants, and it is for the United States to discharge the claims which arose from its act.

Finally, it is asserted truly that Maine required the fourth article as a condition precedent to her assent to the treaty; and therefore it is claimed that Maine, and not the federal government, is bound to execute it. Maine *has* executed it, with the knowledge and acquiescence of the federal government, in respect to her own lands, and *has* executed deeds to all the claimants thereon, including those who were merely settlers at the date of the treaty. It is due to Maine and Massachusetts here to say, that of all the parties bound by the treaty, they alone have complied in good faith with all the conditions which Maine imposed upon her assent.—(Appendix B.) The engagements of Great Britain in respect to the timber fund in the treasury of New Brunswick, and to the navigation of the St. John, have been violated by Great Britain, and neglected by the United States. To this day they are unexecuted. Maine has also executed the treaty in regard to the claimants in Eaton and Plymouth, so far as to ascertain and set off their claims upon the private property there; but she refuses to provide for releases of the title, or to deed other lands in exchange, until the federal government shall have assumed the responsibility. Thus the treaty rights of the parties in the Senate bill have not been secured. For eighteen years they have been seeking relief, and still, though their rights have been clearly ascertained and often acknowledged, they are as completely *unexecuted* as they were at the date of the treaty. Admitting, however, for the purposes of the argument, that Maine ought to be held responsible for the fourth article, yet, by the very terms of the article, the federal government was bound to execute every provision of it, and “to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them.” We think the claimants have a right to ask relief, and the federal government is pledged to give it. If Maine, or Maine and Massachusetts, ought to be held to this responsibility ultimately, they are now claimants under the treaty, for land and expenses, to the amount of \$89,000, a part of which claim is of the same character as that of other claims of those States which have

already been acknowledged and paid by the federal government. It will, therefore, be within the power of Congress hereafter to charge the amount of the pending bill, or such part as may be proper, upon that claim.

Having thus fully considered the objections to the claim for lands, a brief statement of the claim for timber destroyed will conclude this report.

Timber depredations.

In respect to depredations upon the timber on other lands in Eaton and Plymouth, not included in the "possessory" claims, and for which compensation is provided in the third section of the bill, your committee adopts the language of a report made in behalf of the House Committee of Claims of the thirty-fourth Congress, by Mr. Knowlton, and approved, in behalf of the committee of the thirty-fifth Congress, by Mr. Maynard, to wit:

"It further appears, from the testimony in this case, that the valuable pine timber upon the Eaton grant and the Plymouth township was subjected to extensive depredations, commencing about the year 1833; that those depredations were committed by the citizens of New Brunswick, and that the owners were disabled from protecting their property in consequence of an arrangement entered into between the United States and Great Britain in 1832, by which the jurisdiction of Maine over this part of the so-called "disputed territory" was agreed to be suspended until the final termination of the controversy. While Maine did not admit the authority of the United States to bind her by any such arrangement, it appears that she did, in deference to the wishes and solicitation of the United States, forbear to assert her jurisdiction, even against trespassers, until the year 1839. It is for the losses of timber suffered during this period, from 1832 to 1839, and in consequence of an arrangement of this government suspending the jurisdiction of Maine, that the parties injured now ask compensation.

"From public considerations connected with the peace of the country, their property was placed out of that protection of the laws which is the common right of all our citizens, and their claim to be indemnified for resulting losses would seem to be well founded."

In addition, we will observe that, in the fifth article of the treaty, it was agreed that a fund in New Brunswick, arising from the timber taken from the land while New Brunswick exercised jurisdiction, should be delivered to the United States, to be paid over to Maine and Massachusetts. Had this article been enforced by the United States, and the money been exacted and paid over, it might be said, and we think Maine at least would agree, that claims for timber depredations on private lands should be charged to that fund. It appears, however, that although New Brunswick has acknowledged a cash fund, arising from Maine lands, amounting "in full" to £8,417, and exclusive of expenses charged to that fund, to £6,467, and also bonds for £2,495 given for timber; yet the federal government has never exacted the money from Great Britain, nor paid a dollar to Maine and Massachusetts. The fifth article was also one of the conditions precedent to

the assent of Maine to the treaty, and she has a right to demand either that the treaty shall be enforced, or payment shall be assumed by the federal government. In any event, the loss of timber is chargeable to the action of the United States, ten years previous to the treaty, and the owners of the property ought not to be deprived of their rights, or further delayed, by any questions growing out of the treaty between the United States and Great Britain, or between the United States and Maine. The owners of the timber were not citizens of Maine, nor were they parties to the treaty. Independent of the treaty, their claim is justly chargeable to, and ought to be paid by, the federal government.

Rule of compensation.

In fixing the compensation, your committee has been guided by a full statement of facts and valuations made from personal examination by N. C. Towle, esq., who was a confidential agent, appointed by authority of the Senate, to gather and report the facts in respect to these claims. His report, made to the Senate Committee on Claims, December 1, 1856, is referred to as a part of this report.—(Appendix G.) From this report it appears that the value of the 8,430 acres covered by the "possessory" claims, with the improvements and an allowance for timber converted, was, on a moderate estimate in 1856, within a fraction of eight dollars per acre. Only half that sum is allowed in the bill, this being the value fixed by previous committees. For depredations on 23,610 acres of the lands not covered by "possessory" claims under the treaty, the rate allowed is one dollar per acre, and that sum is, as Mr. Towle observes, "more than fifty per cent. below the value, as stated by the witnesses whose testimony was taken."

These claims have been repeatedly examined by committees of both branches of Congress, and uniformly reported favorably. The majority of your committee believe that any further delay in granting relief will be a denial of justice, and too probably a severe hardship to many of the parties. The persons in whom the Massachusetts title remains acquired their rights by purchase in good faith, and have been owners for nearly thirty years; four of them are, each, over eighty years of age, and the two ladies named in the bill particularly need the relief they ask. We therefore recommend that the Senate bill be passed in concurrence.

APPENDIX A.

THE JURISDICTION OF MASSACHUSETTS UNDISPUTED WHEN PLYMOUTH AND EATON TOWNSHIPS WERE GRANTED.

Governor Smith, of Maine, to Mr. Livingston, Secretary of State, November 10, 1831.

"I beg to refer to the accompanying copy of a letter of John G. Deane, an agent appointed by this State to gain information in relation to this territory. By the facts there stated, it appears that the actual possession and jurisdiction of Massachusetts since 1792, and of Maine, since her separation, has been greatly more extensive and continued than that of the provincial government. After the true St. Croix and its sources were ascertained in 1798, the British ceased to exercise any acts of jurisdiction over the settlement at Madawaska, or other parts of the territory, since disputed; and for twenty years, and until the commencement of the controversy respecting the boundaries, their jurisdiction was not resumed. But since that time, and subsequently to 1827, *when it is supposed the arrangement before alluded to was made*, the British, for the first time, appointed magistrates in this territory, who acted as such, granted timber licenses, and organized militia companies, issued legal process against American citizens, have interfered with the settlers on the Aroostook," &c.

Mr. Deane to Governor Smith, November 2, 1831, (referred to above.)

"In 1824 Sir Howard Douglass arrived, and took upon himself the government of New Brunswick, as its lieutenant governor." "In 1820 and 1821 three or four persons went up and established themselves on the banks of the Aroostook. Several from the province of New Brunswick and the State of Maine, in the following years joined them. After the commencement of Sir Howard Douglass' administration, licenses were granted to cut timber in this region also, and civil processes were served upon the inhabitants. *On this river they had not, prior to his administration, exercised any act of jurisdiction whatever*, that region adjoining the line having, in fact, been surveyed and granted by Massachusetts, seventeen years before, to the town of Plymouth and General Eaton."

SUBSEQUENT SUSPENSION OF THE JURISDICTION OF MAINE—MAINE REMONSTRATING.

Mr. Van Buren (Secretary of State) to Governor Smith, March 18, 1831.

"I am instructed by the President to express his desire that, while the matter is under deliberation, no steps may be taken by the State of Maine, with regard to the disputed territory, which might be calculated to interrupt or embarrass the action of the executive branch of this government upon the subject."

Mr. Livingston (Secretary of State) to Governor Smith, Oct. 5, 1831.

“In directing me to make this communication, the President has instructed me to ask for such information on the subject as you may possess, and to add the expression of his earnest wish that no measures may be taken by the State authorities that will change the state of things, before the whole subject can be acted upon at the ensuing session of Congress.”

Same to same, October 21, 1831, in reference to a note to the British Chargé d'Affaires.

“You will observe the extreme desire of the Executive of the United States to conform with scrupulous good faith to the arrangement made with the minister of Great Britain for preserving the state of things as it then existed on both sides until a final disposition could be made of the question.”

Governor Smith to Mr. Livingston, November 10, 1831.

“In your last letter I am informed that an arrangement was made with the minister of Great Britain for preserving the state of things as it then existed on both sides, until a final disposition could be made of the question, and that the arrangement was communicated to me. I can only state, in reply, that until your last letter no notice of such an arrangement was ever received by me, and no copy of it can be found among the archives of this State. Though allusion is made to such an arrangement in the correspondence between Mr. Clay, former Secretary of State, and my predecessor, the late Governor Lincoln, it was then stated to have been violated by the British authorities.” *
* * “During the whole progress of this negotiation Maine has continued respectfully but decidedly to remonstrate against proceedings directly involving her rights and interests as a State, and to which her assent was never requested. She contends that the United States have not the power, by the federal Constitution, to alienate, by negotiation or otherwise, any portion of the territory of a State without the consent of such State. She opposed the submission of the question to arbitration. She has communicated to the President her conviction that the award of the arbitrator (the King of the Netherlands) was not binding upon this State or upon the United States, and has protested against its acceptance. She has exerted all the means in her power for the preservation of her rights and territory. And if, after all, the wisdom of Congress shall decide that the interests of the nation require the extraordinary opinion and advice of the King of the Netherlands to be carried into effect, from necessity alone will the people of this State be compelled to submit.”

MR. CLAY'S ARRANGEMENT OF 1827 VIOLATED BY NEW BRUNSWICK.

From President's message, Dec. 4, 1827.

"While these questions [boundary, &c.] have been pending, incidents have occurred of conflicting pretensions and of dangerous character upon the territory itself in dispute between the two nations. *By a common understanding between the governments, it was agreed that no exercise of exclusive jurisdiction by either party, while the negotiation was pending, should change the question of right to be definitively settled.*"

Mr. Clay (Secretary of State) to Mr. Vaughan, (British minister,) Nov. 17, 1827.

After reciting instances of British jurisdiction on the Aroostook river, Mr. Clay concluded his note in these words: "The proceedings which it discloses *being incompatible with the rights of the United States*, at variance with that forbearance and moderation which, *it has been understood between us, were to be mutually observed*, and exhibiting the exercise of rigorous acts of authority within the disputed territory, which could only be justified by considering it as constituting an incontestible part of the British dominions, I have to request such explanations as the occasion calls for."

APPENDIX B.

CONSIDERATIONS, CONDITIONS, EQUIVALENTS, AND COMPENSATIONS OF THE TREATY.

Mr. Webster to commissioners of Maine and Massachusetts, July 15, 1842.

"If this line [the conventional line of the treaty] should be agreed to on the part of the United States, I suppose that the British minister would, as an equivalent, stipulate, first, for the use of the river St. John, for the conveyance of the timber growing on any of its branches to tide-water, free from discriminating tolls, impositions, or inabilities of any kind, the timber enjoying all the privileges of British colonial timber. All opinions concur that this privilege of navigation must greatly enhance the value of the territory and the timber growing thereon, and prove exceedingly useful to the people of Maine.

"Second. That Rouse's Point, in Lake Champlain, and the lands heretofore supposed to be within the limits of New Hampshire, Vermont, and New York, but which a correct ascertainment of the 45th parallel of latitude shows to be in Canada, should be surrendered to the United States.

"It is probable, also, that the disputed line of boundary in Lake Superior might be so adjusted as to leave a disputed island within the United States.

“These cessions on the part of England would inure partly to the benefit of the States of New Hampshire, Vermont, and New York, but principally to the United States. The consideration on the part of England, for making them, would be the manner agreed upon for adjusting the eastern boundry. *The price of the cession, therefore, whatever it might be, would in fairness belong to the two States interested in the manner of that adjustment.*

“Under the influence of these considerations, I am authorized to say, that if the commissioners of the two States assent to the line as described in the accompanying paper, *the United States will undertake to pay to these States the sum of one hundred and fifty thousand dollars, to be divided between them in equal moieties, and also to undertake for the settlement and payment of the expenses incurred by these States for the maintenance of the civil posse; and also for a survey which it was found necessary to make.*

“The line suggested, with the compensations and equivalents which have been stated, is now submitted for your consideration. That it is all which might have been hoped for, looking to the strength of the American claim, can hardly be said. But, as the settlement of a controversy of such duration is a matter of high importance, as equivalents of undoubted value are offered, as longer postponement and delay would lead to further inconvenience, and to the incurring of further expenses, and as no better occasion, or perhaps any other occasion, for settling the boundary *by agreement, and on the principle of equivalents*, is ever likely to present itself, the government of the United States hopes that the commissioners of the two States will find it to be consistent with their duty to assent to the line proposed and to the terms and conditions attending the proposition.”

Massachusetts commissioners to Mr. Webster, July 20, 1842.

“Whether the national boundary suggested by you be suitable or unsuitable, whether the compensations that Great Britain offers to the United States for the territory conceded to her be adequate or inadequate, and whether the treaty which shall be effected shall be honorable to the country or incompatible with its rights and dignity, are questions, not for Massachusetts, but for the general government, upon its responsibility to the whole country, to decide. *It is for the State to determine for what equivalents she will relinquish to the United States her interests in certain lands in the disputed territory, so that they may be made available to the government of the United States in the establishment of the northeastern boundary, and in a general settlement of all matters in controversy between Great Britain and the United States.* In this view of the subject, and with the understanding that by the words “the nearest point of the highlands,” in your description of the proposed line of boundary, is meant the nearest point of the crest of the highlands; that the right to the free navigation of the river St. John shall include the right to the free transportation thereupon of all products of the soil as well as of the forest, and that *the pecuniary compensation to be paid by the federal government to the State of Massachusetts shall be increased to the sum of one hundred and fifty thousand dollars, the State of Massachusetts, through her commissioners, hereby*

relinquishes to the United States her interest in the lands which will be excluded from the dominion of the United States by the establishment of the boundary aforesaid."

Commissioners of Maine to Mr. Webster, July 22, 1842.

"Without entering, however, upon the particular consideration of the terms and conditions, which we have not thought it necessary to do, we distinctly state that our repugnance to the line *is based upon the extent of territory required to be yielded.* We may, however, in passing, remark that all the pecuniary offers contained in your note, most liberally construed, would scarcely recompense and repay to Maine the amount of money and interest which she has actually expended in defending and protecting the territory from wrongs arising and threatened by reason of its condition as disputed ground.

"Considering, then, this proposition as involving the surrender of more territory than the avowed objects of England require, as removing our landmarks from the well known and well defined boundary of the treaty of 1783, (the crest of the highlands,) besides insisting upon the line of the arbiter in its full extent, we feel bound to say, after the most careful and anxious consideration, that we cannot bring our minds to the conviction that the proposal is such as Maine had a right to expect.

"We are now given to understand that the Executive of the United States, representing the sovereignty of the Union, assents to the proposal, and that this department of the government, at least, is anxious for its acceptance, as, in its view, most expedient for the general good.

"The commissioners of Massachusetts have already given their assent on behalf of that Commonwealth. Thus situated, the commissioners of Maine, invoking the spirit of attachment and patriotic devotion of their State to the Union, and being willing to yield to the deliberate convictions of her sister States as to the path of duty, and to interpose no obstacles to an adjustment which the general judgment of the nation shall pronounce as honorable and expedient, even if that judgment shall lead to a surrender of a portion of the birthright of the people of their State, and prized by them because it is their birthright, have determined to overcome their objections to the proposal so far as to say that if, upon mature consideration, the Senate of the United States shall advise and consent to the ratification of a treaty, corresponding in its terms with your proposal, and *with the conditions in our memorandum accompanying this note, (marked A,)* and identified by our signatures, they, by virtue of the power vested in them by the resolves of the legislature of Maine, give the assent of that State to such a conventional line, with the terms, conditions, and equivalents, herein mentioned."

"A.

"The commissioners of Maine request that the following provisions, or the substance thereof, shall be incorporated in the proposed treaty, should one be agreed on :

"1. That the amount of 'the disputed territory fund' (so called) received by the authorities of New Brunswick, for timber cut on the disputed territory, shall be paid over to the United States, for the use of Maine and Massachusetts, in full, and a particular account rendered, or a gross sum, to be agreed upon by the commissioners of Maine and Massachusetts, shall be paid by Great Britain as a settlement of that fund; and that all claims, bonds, and securities, taken for timber cut upon the territory, to be transferred to the authorities of Maine and Massachusetts.

"2. That all grants of land within that portion of the disputed territory conceded to Great Britain, made by Maine and Massachusetts, or either of them, shall be confirmed, and all equitable possessory titles shall be quieted to those who possess the claims; and we assent to a reciprocal provision for the benefit of settlers falling within the limits of Maine, and we trust that the voluntary suggestion of the British minister in regard to John Baker, and any others, if there be any similarly situated, will be carried into effect, so as to secure their rights.

"3. That the right of free navigation of the St. John, as set forth in the proposition of Mr. Webster, on the part of the United States, shall extend to and include the products of the soil in the same manner as the products of the forest, and that no toll, tax, or duty be levied upon timber coming from the territory of Maine.

"EDWARD KAVANAGH.

"EDWARD KENT.

"JOHN OTIS.

"WILLIAM P. PREBLE."

APPENDIX C.

The purpose of the treaty in respect to land claims as shown by the negotiators.

The avowed purpose of the negotiation was not to ascertain the true boundary line described in the treaty of 1783, but, by agreement and convention, to make a *new line* entirely irrespective of public or private rights, except so far as consistent with a new line, such as would be feasible as a boundary, and permit convenient access between the northeastern British-American colonies.—(Letters of Mr. Webster and Lord Ashburton, June 17, 1842.) Hence, when Lord Ashburton, June 21, 1842, suggested a slight variation from one part of the river St. John, (which was confessedly the natural boundary,) for the purpose of saving the Acadians, who were French by birth and British by allegiance, Mr. Webster insisted that the river was altogether too good a boundary line to be sacrificed for the mere convenience or wishes of the Acadians; and to meet their case he added:

"Their rights of property would, of course, be all preserved, both

of inheritance and alienation.”—(Mr. Webster to Lord Ashburton, July 8, 1842.)

Whether these “rights of property,” “both of inheritance and alienation,” were according to the civil law or to British law, in either event they differ from Maine laws; yet it is plain that Mr. Webster intended to preserve them all in Maine. Nor did he act unadvisedly. Eight days after Lord Ashburton’s letter, and nine days before Mr. Webster’s reply, the commissioners of Maine had taken the same position, including *the possessory rights of other actual settlers*, in these words:

“In any treaty which may be made with Great Britain affecting these people, the *grants* which have been made to them by New Brunswick may and ought to be confirmed in fee simple, *with such provision in regard to the possessory rights acquired by other actual settlers there as may be just and equitable*.”—(Commissioners of Maine to Mr. Webster, June 29, 1842.)

The boundary line, with all the conditions, equivalents, and compensation therefor, was agreed upon by the negotiators on the 15th of July, and on the 20th the commissioners of Massachusetts gave their assent, asking only an increase of compensation, which was accorded. On the 22d of July Maine gave her assent, on three new conditions, one of which specifically provided for grants and possessory claims, thus:

“2. That all *grants* of land within that portion of the disputed territory conceded to Great Britain, made by Maine and Massachusetts, or either of them, *shall be confirmed*, and all *equitable possessory titles shall be quieted to those who possess the claims*; and we assent to a reciprocal provision for the benefit of settlers falling within the limits of Maine.”—(Maine Commissioners to Mr. Webster, July 22, 1842.)

“All equitable possessory titles shall be quieted to those who possess the claims,” said the Maine commissioners, and they consent to make the provision reciprocal. Mr. Webster accepted the condition—made it general, so as to apply to both sides of the line—substituted “equitable possessory claims” for the questionable words “equitable possessory titles”—fixed the term of possession—made the “improvements” the measure of the equity, and then provided that “all equitable possessory claims, arising from a possession and improvement of any lot or parcel of land *by the person actually in possession*, or by those under whom such person claims, for more than six years before the date of this treaty, shall” “be deemed valid, and be confirmed and quieted *by a release*, to the person entitled thereto, *of the title* to such lot or parcel of land so described as best to include the improvements made thereon.”

APPENDIX D.

Resolves of the legislature of Maine, February 21, 1843, authorizing first board of commissioners.

STATE OF MAINE.

RESOLVES authorizing the appointment of commissioners to locate grants and determine the extent of possessory claims under the late treaty with Great Britain.

Whereas by the late treaty between the United States and Great Britain it is provided that all grants of land made by either party within the limits of the territory which by the treaty falls within the dominions of the other party shall be held valid, ratified and confirmed to the persons in possession under such grants, to the same extent as if such territory had by the treaty fallen within the dominions of the party by whom said grants were made, and all equitable possessory claims arising from a possession and improvement of any lot or parcel of land by the person actually in possession, or by those under whom such person claims, for more than six years before the date of the treaty, shall in like manner be deemed valid, and be confirmed and quieted by a release to the person entitled thereto of the title to such lot or parcel of land so described as best to include the improvements made thereon, and in all other respects the two contracting parties to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them respectively which has heretofore been in dispute between them; and whereas there are numerous inhabitants on and near the rivers St. John and Aroostook claiming lands under grants from the British government, and also by virtue of possession and improvements: Now, therefore, in order to determine the extent of the several claims and do justice to the claimants—

Resolved, That the governor, by and with the advice of the council, be, and he hereby is, authorized to appoint one or more commissioners, to act in conjunction with the commissioners on the part of the Commonwealth of Massachusetts in carrying into effect the provisions of the treaty, whose duty it shall be to set off by metes and bounds all grants as aforesaid, and also to set off to each settler so much land as he may be entitled to, not exceeding, however, two hundred acres to any one individual, unless his actual improvements are such that it is necessary to set off a larger quantity in order to include them; and the said commissioners are authorized to procure the necessary supplies and such assistance as may be necessary to enable them to carry into effect the object of this resolve. The said commissioners shall make a report of all their doings to the governor and council, who are authorized to audit their accounts and allow them such compensation for their services as to them shall appear reasonable and proper, not exceeding three dollars per day; and the land agent is hereby authorized to pay said commissioners the amount so allowed. And said commissioners shall return to the land office full field-notes and correct plans of all surveys made by them or under their direction.

The name of the occupant of each lot claimed by possession shall be given in the field-notes of the survey of the lot; and if the occupant be not the owner, the evidence by which the commissioners determine the ownership shall be entered with the field-notes, and the name of each owner to be written legibly on the plan upon the lot set off to him. They shall obtain authenticated copies of all grants made by the British government within the territory which has heretofore been in dispute within the State of Maine, and return them to the land office with the survey.

Resolved, That the land agent be, and he hereby is, authorized, in concurrence with the land agent of Massachusetts, to convey to said settlers, by deed, such lands as may be set off to them by the commissioners aforesaid upon the undivided lands; and if there be any found on the lands held by Maine in severalty, the land agent will convey in like manner to them.

Resolved, That the governor be requested to present to Congress, for allowance, an account of all expenditures incurred by this State by virtue of the provisions of these resolves.

Resolved, That the governor be requested to transmit a copy of these resolves to the governor of Massachusetts.

In the house of representatives, February 20, 1843. Read and passed.

DAVID DUNN, *Speaker*.

In the senate, February 21, 1843. Read and passed.

EDWARD KAVANAGH, *President*.

Approved February 21, 1843.

JOHN FAIRFIELD.

SECRETARY'S OFFICE,
Augusta, June 4, 1856.

I hereby certify that the foregoing is a true copy of the original deposited in this office, and that, in conformity to a law of the United States, I have caused the seal of the State to be hereunto affixed.

CALEB R. AYER,
Secretary of State.

APPENDIX E.

DECISION OF SUPREME COURT OF MAINE.

[32 Maine Reports, 214.]

"It is further insisted that the treaty does not operate upon the title or grants *proprio vigore*, but only as a contract requiring legislative interposition to carry it into effect; a treaty is usually a contract between two parties; it may, however, be so framed as to accomplish its purposes without any further act, if the language used be suitable, and the purpose be such as may be thus accomplished. In the United States a treaty is to be regarded as the supreme law, and operative, as

such, when the stipulations do not import a contract to be performed. It is true that the language used in the treaty between the United States and Spain, made on February 22, 1819, was not regarded, in the case of *Foster vs. Neilson*, 2d Peters, 314, as operative *per se* to confirm the grants alluded to; but when the language used in the Spanish duplicate came before the court, in the case of the United States *vs. Percheman*, 7 Peters, 51, 88, it was decided to be operative upon the grants without any legislative interposition. The provision of the treaty, as presented in the former case, declare that grants made before a certain period "shall be ratified and confirmed," and as presented in the latter case, "shall remain ratified and confirmed." There is an essential difference between the language upon which the court acted in the case of *Foster and Neilson*, and that used in the treaty of Washington, which provides that grants of land "shall be held valid, ratified and confirmed," which does not contemplate any future act as necessary to the validity, ratification, or confirmation of the grant; they are held to be so by those whose duty it may be to act upon them; the language addresses even more appropriately the judicial than the legislative department. It is the duty of this court to consider that treaty to be a law, operating upon the grant made under the authority of the British government, and declaring that it shall be held valid, ratified and confirmed.

"It is further insisted that it cannot be permitted so to operate, and thereby defeat the title of the demandant to the land, without a violation of that provision of the Constitution of the United States which declares that private property shall not be taken for public use without just compensation; it is not in the argument denied that public or private property may be sacrificed by treaty; but it is said that such a provision of a treaty as would take private property without compensation must remain inoperative or suspended until compensation has been made; such a construction would infringe upon the treaty-making power, and make its acts depend for their validity upon the will of the legislative department, while the Constitution provides that treaties shall be the supreme law.

"The clause of the Constitution referred to is a restriction imposed upon the legislative department in its exercise of the right of eminent domain; it must of necessity have reference to that department, which has the power to make compensation, and not to the treaty-making power, which cannot do it. This provision of the Constitution will not prevent the operation of the treaty upon the grant of the tenant, (*Ware vs. Hilton*, 3 Dallas, 236; *United States vs. Schooner Peggy*, 1st Cranch, 110;) the demandant must seek compensation for the loss of his land from the justice of his country. *Demandant non-suit.*"

APPENDIX F.

Resolves of the legislature of Maine, April 12, 1854, authorizing second board of commissioners.

STATE OF MAINE.

RESOLVES authorizing the appointment of commissioners to locate grants and determine the extent of possessory claims under the late treaty with Great Britain.

Resolved, That the governor, by and with advice of council, be, and he hereby is, authorized to appoint one or more commissioners, whose duty it shall be to examine all claims under the treaty of Washington to lands lying in this State which were not finally examined and adjudicated upon by the commissioners appointed under resolves of Maine, approved February 21, 1843, and of Massachusetts, approved March 24, 1843; and—

First.—To set off by metes and bounds all grants under said treaty not heretofore located by said former commissioners.

Second.—To set off to each settler upon lands of this State entitled to land under the treaty, by reason of possession and improvements, so much land as he shall be entitled to, not exceeding two hundred acres, unless his actual improvements are such that it is necessary to set off a larger quantity in order to include them.

Third.—To examine and report upon all claims, under said treaty, of persons to lands which, prior to the treaty, they had purchased or contracted for with either of the States of Maine or Massachusetts, and to set forth what claimants, if any, have already received compensation for their claims of the State of Maine.

Fourth.—To examine and report upon all claims to parties who claim to be equally entitled to land under said treaty by reason of possession and improvements, but where possession had not been commenced six years before the treaty.

Fifth.—To examine all claims under the treaty by reason of *possession* and improvement of lands lying within the township granted to the town of Plymouth and the tract granted to General Eaton, and to report the names of parties holding such possessions at the time of the treaty, and of the present claimants, if any change has been made, and the number of acres claimed by each; what would be a fair price for the land in each claim if in a state of nature, and what the present value of each improvement above the price of the lands, and on what terms the title to such lands can be procured from the present owners of the fee. The said commissioners shall make report of all their doings to the governor and council, who are authorized to audit their accounts and allow them such compensation for their services as to them shall seem reasonable and proper; and the land agent is hereby authorized to pay said commissioners the sum so allowed; and said commissioners shall return to the land office full field-notes and correct plans of all the surveys made by them or under their direction. The name of the occupant of each lot claimed by possession shall be

given in the field-notes of the survey of the lot; and if the occupant be not the owner, the evidence by which the commissioners determined the ownership shall be entered with the field-notes, and the name of each owner shall be legibly written on the plan of the lot set off to him.

Resolved, That when such report shall be made, the governor be requested to communicate a copy thereof to the President of the United States, and to inform him that the State is ready to direct deeds to be made to convey the *title* to the claimants so far as the title is in the State, and is also ready to procure a *title* to be made to the claimants whose claims are reported by the commissioners to be located on land the title to which is in grantees holding under the States of Maine or Massachusetts, if the same can be procured on reasonable terms; and if not, to give such claimants an equivalent in the title to other lands in exchange for their claim, whenever Congress shall be ready to make to the State a suitable indemnity and recompense for the land so required to be taken, and for that already taken, to satisfy the requirements of the treaty.

In the house of representatives, April 11, 1854. Read and passed.
NOAH SMITH, JR., *Speaker*.

In the senate, April 12, 1854. Read and passed.
LUTHER S. MOORE, *President*.

Approved, April 12, 1854.

WILLIAM G. GROSBY.

SECRETARY'S OFFICE,
Augusta, June 4, 1856.

I hereby certify that the foregoing is a true copy of the original deposited in this office, and that, in conformity to a law of the United States, I have caused the seal of the State to be hereunto affixed.

CALEB R. AYER,
Secretary of State.

APPENDIX G.

UNITED STATES SENATE,
Washington city, August 7, 1856.

SIR: The Committee on Claims, acting by authority of a resolution of the Senate passed on the 18th day of July, 1856, have appointed you an agent to take and receive proof as to the claims of individuals described in the memorials of Geo. M. Weston, esq., commissioner of Maine, now pending before the committee.

In the execution of the duty thus assigned you the committee directs that, as soon as may be after the adjournment of the present session of Congress, you do proceed to the county or counties, in the State of Maine, in which the lands are located upon which the said claims are predicated, and after giving proper notice to the claimants

or their agent, you will proceed to take and receive such proof as may be presented to you in regard to the validity and amount of the several claims. You will receive and examine such documentary and record evidence bearing upon the cases as may be exhibited to you, and examine such witnesses as may be brought before you by the parties, and such as you may think proper to call upon to testify, both by direct and cross-examination, particularly as to the title and value of the property at the time it was taken. The testimony, including the answers to questions, should be taken down in writing, and verified by oath.

The object being to get at the real facts, the law, justice, and true amount involved in each case, and to guard against any possible imposition by *ex parte* evidence, you will, in addition to the above, make such personal examinations of the property as you may deem expedient.

You will make a report of your doings, accompanied with the testimony taken and information obtained, with your opinion thereon, to the Committee on Claims of the Senate, at the commencement of the next regular session of Congress.

RICHARD BRODHEAD,
Chairman of the Committee on Claims.

N. C. TOWLE, *Agent, &c.*

DECEMBER 1, 1856.

SIR: In the discharge of the duties assigned me, as agent, to "take and receive proof as to the claims of individuals described in the memorial of Geo. M. Weston, esq., commissioner of Maine," under a resolution of the Senate of July 18, 1856, and in conformity to your instructions, I proceeded, immediately after the adjournment of Congress, to Aroostook county, in the State of Maine, the locality in which the claims originated, and in which most of the persons interested reside.

I examined the lands in question, and received the statements of a large number of the settlers in relation to their claims; I also received such testimony as was presented in relation to the timber taken from the land during the suspension of the jurisdiction of the United States and of Maine over the territory, by an arrangement between the governments of the United States and Great Britain, and for which payment is claimed of this government.

All the testimony was taken down in writing, together with the questions propounded by me and the answers thereto, and is herewith submitted.

The accompanying statement contains a general view of the claims presented, and of the evidence by which they are sustained.

All of which is respectfully submitted.

N. C. TOWLE, *Agent, &c.*

Hon. RICHARD BRODHEAD,

Chairman Senate Committee on Claims.

Statement of the claims represented by Geo. M. Weston, esq., commissioner of Maine, growing out of the settlement of the northeastern boundary question, by the treaty of August 9, 1842, submitted to the Senate Committee on Claims by N. C. Towle, agent, under the resolution of the Senate of July 18, 1856.

SKETCH OF THE NEGOTIATIONS.

The difficulties in reference to the northeastern boundary commenced immediately after the conclusion of the treaty of 1783, and it was not until after the treaty of 1794 that the identity of the river St. Croix was determined, and the point to be regarded as the source of that river was ascertained and fixed. The next point named in the treaty was the highlands that divide the waters flowing into the Atlantic ocean from those which flow into the Gulf of St. Lawrence. The British government claimed that those "highlands" must be found south of the valley of the St. John's, a river which flows into the bay of Fundy; while the United States claimed that the "due north line" should be extended across the St. John's, and until it reached the "highlands" immediately south of the St. Lawrence river. The distance between these two ranges of highlands exceeded one hundred miles, and involved the claim to a large territory of rich and valuable country, embracing the entire valley watered by the Aroostook river, as well as a large portion of that watered by the upper St. John's and its tributaries.

The two governments finding it impracticable to make any further progress in ascertaining the boundary of the two countries, agreed by the convention of 1827 to submit the questions in dispute to the arbitration of the King of the Netherlands, who decided that no single range of highlands conforming to the description in the treaty was to be found, but that a portion of the description in the treaty would be applicable to the highlands north of the St. John's, as claimed by the United States, and another portion to the ridge south of the St. John's, as claimed by Great Britain; and he came to the conclusion that a division of the disputed territory between the two countries was the best practicable mode of settlement. This decision, had it been accepted, would have given the valley of the Aroostook to the United States.

TIMBER DEPREDATIONS.

In 1832 the valley of the Aroostook was an unbroken wilderness. The broad intervals and the gentle slopes along that river and its tributaries were covered with a heavy growth of pine, spruce, and maple forests. The lands bordering upon the St. John's had already been stripped of the more valuable timber, and the attention of the lumbermen began to be directed to the tributary streams. Immediately prior to the rejection of the award of the King of the Netherlands, the principal scene of lumbering operations in that region was on the Tobique, a considerable stream, which flows into the St. John's from the east, about six miles below the mouth of the Aroostook.

Prior to the rejection of the award in 1832, the valley of the Aroostook, which had been assigned to the jurisdiction of the United States, remained free from the operations of the lumbermen; but when that fact became known, and the British claim of jurisdiction over that region was revived, these men, being British subjects, began to turn their attention to that rich and tempting field of operations. Settlers from the neighboring province began to make their way up the Aroostook, and to occupy and improve the lands on both banks of that river. Large lumbering operations were prosecuted at the same time; and, as appears from the evidence taken, between the time of the rejection of the award of the arbiter, in 1832, and the time of the forcible occupancy of the territory by the authorities of Maine, in 1839, most of the valuable lumber for a considerable distance on each side of the river had been taken off, and the lands in the immediate vicinity of the river, for ten or fifteen miles from its mouth, were taken possession of and improved by the squatters. All obstructions to these proceedings were precluded by an arrangement between the two governments that neither should exercise jurisdiction over the territory in dispute.

In a communication addressed to the British minister, dated July 21, 1832, the Secretary of State says:

"Until this matter [the negotiations in reference to the disputed line] be brought to a final conclusion, the necessity of refraining on both sides from any exercise of jurisdiction, beyond the boundaries now actually possessed, must be apparent, and will, no doubt, be acquiesced in on the part of his Britannic Majesty's provinces, as it will be by the United States."

To this proposition the British minister responded, under date of April 14, 1833, that "his Majesty's government entirely concur with that of the United States in the principle of continuing to abstain, during the progress of the negotiation, from extending the exercise of jurisdiction within the disputed territory beyond the limits within which it has hitherto been usually exercised by the authorities of either party."

This arrangement was substantially adhered to until the winter of 1839, when the authorities of Maine, becoming aroused at the extensive depredations which were being committed upon what they regarded as the valuable property of the State and its citizens, resolved to interpose the State sovereignty for the protection of its own rights and interests, regardless of the diplomatic understandings of the general government. They accordingly despatched an armed posse with instructions to arrest the lumbering depredations in the regions of the Aroostook, and to assert and maintain the jurisdiction of the State over it, but not to interfere with the peaceable occupancy of actual settlers.

It appears from the testimony of D. O. Parkes, George Grantham, and M. Kean, who were on the ground at the time and speak from personal observation, that these lands were well timbered, and that the timber was mostly cut and taken off between 1832 and 1839—during the period of suspension of jurisdiction. Their average estimate of the quantity of timber on the land at the commencement of the operations (1832) was $2\frac{1}{2}$ tons. Mr. Grantham thinks two-thirds of it

was taken off between 1834 and 1839. The other witnesses state that most of it was taken during that period.

These statements and estimates are corroborated by Mr. Pattee, one of the State commissioners, and by Mr. Hamlin, State land agent, and several others, whose affidavits are among the papers.

It is clear, from the whole testimony, that the quantity of timber taken during said period could not have been less than one ton per acre; and that the price actually paid for stumpage, at the time, was not less than one dollar and sixty cents per ton. The value of timber upon the stump, in that vicinity, at this time and for several years past, is \$4 56 per ton.

The quantity of land upon which this stumpage is claimed is 23,646 acres, for which it is understood that the proprietors are willing to accept one dollar per acre as full compensation, although that rate is more than fifty per cent. below the value, as stated by the witnesses whose testimony was taken.

The fifth article of the treaty would seem to indicate that some arrangement had existed between the two governments designed for the protection of this property. It is as follows:

"Art. 5. Whereas, in the course of the controversy, respecting the disputed territory on the northeastern boundary, some moneys have been received by the authorities of her Britannic Majesty's province of New Brunswick, with the intention of preventing depredations on the forests of the said territory, which moneys were to be carried to a fund called "the disputed territory fund," the proceeds whereof, it was agreed, should be hereafter paid over to the parties interested, in the proportions to be determined by a final settlement of boundaries, it is hereby agreed that a correct account of all the receipts and payments on the said fund shall be delivered to the government of the United States," &c., to be paid over to the States of Maine and Massachusetts.

Whether any money was received from the provincial government, under this article, or not does not appear from the papers or evidence submitted to me.

That this timber was lost to the proprietors during the suspension of the jurisdiction of the United States and consequently of the State of Maine over the territory, in accordance with the diplomatic arrangement referred to, appears to be clearly shown; but whether the government is legally or equitably bound to remunerate its citizens for property lost under such circumstances is respectfully submitted. That the State of Maine withheld the exercise of her authority over the territory as a matter of courtesy to the general government, and not in submission to recognized authority, is apparent from the fact that she resumed the exercise of her jurisdiction in 1839 without the consent of the United States. But if such courtesy was exercised in deference to the known wishes of the general government, and the citizen was deprived of his property in consequence, was not the property of the citizen the consideration, by fair construction, paid for the forbearance which the interests of the United States required, and therefore taken for public use?

POSSESSORY CLAIMS.

The fourth article of the treaty is as follows, viz :

“ Art. 4. All grants of land heretofore made by either party, within the limits of the territory which by this treaty falls within the dominions of the other party, shall be held valid, ratified, and confirmed to the persons in possession under such grants, to the same extent as if such territory had by this treaty fallen within the dominions of the party by whom such grants were made, and all equitable possessory claims arising from a possession and improvement of any lot or parcel of land, by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this treaty, shall in like manner be deemed valid, and be confirmed and quieted by a release, to the person entitled thereto, of the title to such lot or parcel of land so described as best to include the improvements made thereon ; and in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them respectively, which has heretofore been in dispute between them.”

It has already been remarked, that upon the rejection of the award of the umpire in 1832, which had assigned the valley of the Aroostook river to the United States, the British claim to that territory was revived, and settlers from the neighboring province immediately commenced their settlements along that river, as well as in various other portions of the disputed tract. In order to carry this article into effect, so far as it applied to settlers upon the ungranted lands belonging to the States of Maine and Massachusetts, the authorities of those States, immediately after the ratification of the treaty, appointed a board of commissioners for the purpose of locating the grants and determining the extent of the possessory claims therein provided for. All claims to lands, *through grants* made by the government of Great Britain, as contemplated in the first clause of the fourth article, were examined and adjudicated upon by the commissioners, and ratified and confirmed to the persons in possession by the respective States.

In 1854, by authority of a resolution of the legislature of the State of Maine, another board of commissioners was appointed, with the view of carrying into effect the remaining clauses of the said fourth article, by examining into and providing for the quieting of the possessory and equitable claims of settlers. This board met upon the ground, and after hearing the statements and taking the proofs submitted to them they proceeded to have surveyed and set off by metes and bounds, to the persons whom they found to be entitled under the treaty, the lots to which they were adjudged to have just claims. The whole number of claims thus passed upon by the board amounted to about six hundred and fifty, and the quantity of land surveyed and set off to them amounted to 71,562 acres, being a little less than an average of 100 acres to each claimant. More than one-third of this

land had been purchased from the State, or had been contracted for before the date of the treaty.

It will be observed that the treaty provides that possessory claims extending back more than six years prior to its date shall be deemed valid titles. The commissioners set off, as coming under this head, 13,275 acres, divided amongst about 150 settlers.

The board of commissioners also went into the examination of the claims of persons who claimed to be equitably entitled to lands which they had improved, and of which they were in possession at the date of the treaty, but whose possession did not extend back six years.

So far as these claims depend upon the treaty, they are based upon the last clause of the fourth article, to wit: "And in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them respectively." The commissioners report about three hundred settlers of this class, claiming 31,400 acres.

A portion of these lands are located in townships, the title of which had passed from the State prior to their settlement, and, of course, a considerable time prior to the date of the treaty; and it is to this portion that the resolution of the Senate, authorizing this examination, particularly applies. These lots are principally located upon both banks of the Aroostook river, from the New Brunswick line through the townships granted many years ago to the town of Plymouth, Massachusetts, for the support of an academy, and to General Eaton, in consideration of his military services in the war with Tripoli. The settlers are mostly from the neighboring province, and made their settlements while that province claimed the jurisdiction of the country. The number of these improved and occupied lots, in the two townships, is ninety-seven, embracing, in the aggregate, about 8,434 acres. All of these lots, except about one thousand acres, are shown to have been occupied or improved more than six years before the date of the treaty; and, from proof submitted to me, and which is hereto annexed, I am satisfied that most of the lots embraced in the latter description, if not clearly shown to have been occupied and improved six years prior to the treaty, were, in fact, so occupied at that time, or very soon after, and that it would be a great hardship upon these poor settlers to make a distinction between them on so slight grounds. These settlers are all poor, and dependent for the support of themselves and their families upon the produce obtained by their own labor from their little possessions. Each family holds less, on an average, than one hundred acres, and the improvements are generally of a very primitive character.

The Maine commissioners estimated, from actual observation and from proof taken, the whole value of the property covered by these claims, in the two townships under consideration, (exclusive of the right of soil,) at about \$31,000; and from the testimony of one of the commissioners, hereto annexed, it appears that they valued the land at two dollars per acre—the value of the improvements averaging a little less than \$400 for each farm, and my observation would lead me to regard this as a very fair estimate.

It further appears from the proof submitted to me that the value of

the improvements have not materially increased since the making of the treaty, and the reason assigned for the absence of improvements is the uncertain tenure by which they hold their lands. The State, while it has given titles to those settlers who had located upon the State lands, had failed to provide any security for them, and the proprietors under the original State grants were threatening to eject them unless their demands for payment for the land were satisfied.

Whatever the strictly legal and technical rights of the parties may be, it seems to be clear that "the most liberal principles of equity"—according to which the faith of the government is pledged to deal with these parties—requires either that their titles should be affirmed or that some compensation should be made them for their improvements, by which they should be saved from the entire loss of all their hard-earned possessions, and from being turned destitute from their humble homes.

The uncertainty of their present condition evidently operates greatly to discourage and perplex them, and to retard their efforts to improve their condition.

The quantity of land covered by these possessory claims is 8,434 acres, and its value is moderately estimated at \$16,862, exclusive of the improvements. If the value of these be added the amount will be \$49,139.

The commissioners of Maine, in their report to the governor, made during the last, year say: "The title to said lands can be procured from the present owners of the fee for two dollars per acre," (page 30;) and in another part of their report they say: "The proprietors of said townships are willing to release their title to said lots for a reasonable compensation, or exchange the same for other lands belonging to the State," (page 17.)

It appears that the authorities of the State, anxious to carry out the beneficent provisions of the treaty towards these settlers in the most liberal and effective manner, caused these surveys to be made, and, in all cases where the title was in the State, caused deeds to be executed by the land agent conveying the lands to the settlers. This is all the State could be expected to do, although it appears from the above remarks of the State commissioners that the expediency of the State's acquiring these lands from the private proprietors, in order to quiet the possession of the settlers, had been entertained.

Should the United States compensate the proprietors for these lands, they should require that good and valid titles be made to the settlers, so that they should be secured from all future proprietary claims. Nearly fifteen years have elapsed since the conclusion of the treaty. Some of the proprietary titles have changed hands by private sales, and some of the lands have been sold by the State for taxes and purchased in by the assignees of the old proprietors, by which they have acquired a title subsequent to the treaty, under which new embarrassments to the settlers might arise unless guarded against by the provision above referred to.

Lists of the names of persons regarded as entitled to hold their possessions by virtue of the treaty, showing the quantity of land held by each and the value of their improvements, together with a plan of

the surveys made under the direction of the Maine commissioners, are hereunto annexed, from which it will be seen that the whole extent of land covered by these claims is 8,434 acres, and the value of the improvements thereon at the date of the treaty, and not materially changed since, is \$32,277. The value of the land, exclusive of improvements, is stated by Mr. Pattee and other competent witnesses to be two dollars per acre, and not materially changed since 1842.

It appears from the records and papers exhibited that the following named persons hold the proprietary titles to these lands, and are the claimants to indemnity for the loss of title by the operation of the treaty to the extent stated, viz:

Laura A. Stebbins, Catharine C. Ward, Rufus Mansur, and James A. Drew, jointly to 3,353 acres, on which the improvements are \$10,711.

Edmund Monroe three-quarters and Benjamin Sewall one-quarter of 3,385 acres; improvements, \$15,229.

James A. Drew and Rufus Mansur, in equal parts, 1,692 acres; improvements, \$6,337.

It has been decided by the supreme court of Maine, in Little's case, (32 Maine Reports, 214,) that the treaty, being the supreme law of the land, overrides all other titles, and *proprio vigore* gives title to those showing a possession in conformity to its stipulations. And this seems to be in accordance with the decisions of the Supreme Court, who held that "a treaty is the law of the land, and treated as a legislative act by the courts," (2 Peters, 314;) and the treaty for the acquisition of Louisiana, stipulating to protect the inhabitants of the Territory in their property, was so applied, (4 Peters, 511.) And Congress, by passing the act of the last session "for the relief of Josiah S. Little," recognizes the principle of the responsibility of the government in these cases.

List of settlers on the Eaton grant, showing the number of acres claimed by each under the 4th article of the treaty of Washington, and the value of the improvements thereon.

Names.	Acres.	Value.
John Sands and Thomas Walton.....	175	\$150 00
Dodo.....	107	400 00
James Shea.....	86	350 00
Patrick Conly.....	1	150 00
Robert Richards.....	88	300 00
R. Shugren and J. Corkins.....	210	525 00
George F. Parks.....	117	350 00
Hannah Parks.....	135	300 00
D. O. Parks.....	192	450 00
John Buber.....	77	375 00
William Buber.....	77	375 00
Charles Butler.....	52	300 00
Nathaniel Buber.....	61	200 00
Jesse Partridge.....	54	75 00
Moses Glass.....	1 $\frac{1}{2}$	150 00
Patrick Somers.....	79	250 00
John Gallaughn.....	83	200 00
Elias Brown.....	69	400 00
Solomon Brown.....	72	450 00
Abel Humphrey.....	167	551 00
J. & E. Doyle.....	44	400 00
Samuel Work.....	79	550 00
L. Kelly.....	84	350 00
C. Gambeen.....	42	264 00
J. Walton.....	38	
Jonah Whiteknoct.....	68	300 00
James Walton.....	35	250 00
Thomas Kelly.....	142	250 00
Patrick Kelly.....	182	375 00
Elizabeth Dudy.....	260	450 00
Dennis Hale.....	176	1,221 00
Elisha Hale.....	82	
James Keegan.....	112	
Add for error. (See testimony of S. B. Pattee, commissioner) ..		
		3,247
		106
		3,353
		10,711 00

List of settlers on the western section of Plymouth township, showing the number of acres claimed by each under the 4th article of the treaty of Washington, and the value of the improvements thereon. Edmund Monroe and Benjamin Sewell, proprietors.

Names.	Acres.	Value.
A. & J. and A. & F. Bishop.....	6	\$800 00
John Lovely.....	98	400 00
Thomas Beaulean.....	75	700 00
A. & F. Bishop.....	48	300 00
W. & J. Bishop.....	127	600 00
Amos Bishop.....	80	300 00
John Flannery.....	51	175 00
Patrick Flannery.....	70	350 00
A. Giberson's heirs.....	101	200 00
Charles Hammond.....	44	175 00
William White.....	64	400 00
William Day.....	83	400 00
James Guigey.....	189	600 00
Daniel Turner.....	115	500 00
Isaac Smith.....	58	500 00
James Upton.....	138	700 00
Samuel Sands.....	46	2,064 00
Richard Jordan.....	33	
William Haley.....	74	
John Murphey.....	67	
William Upton.....	126	
Patrick Finland.....	121	100 00
Sands & Walton.....	16	
S. Work.....	21	
J. & E. Doyle.....	39	265 00
Margaret Doyle.....	126	
Sarah McGlaughlin.....	199	650 00
T. Giveney and J. A. Drew.....	136	300 00
Edw. Guigey.....	251	800 00
Samuel Davenport.....	100	400 00
E. Watson.....	115	300 00
George Rogers.....	140	500 00
A. Clark.....	99	100 00
Thomas Amaden.....	77	450 00
Alex. Guigey.....	38	400 00
Samuel Farley.....	32	275 00
William Ward.....	56	275 00
John L. Higgins.....	75	300 00
Joseph Barnes.....	51	450 00
	3,385	15,229 00

List of settlers on the eastern section of Plymouth township, (Drew and Mansur, proprietors,) showing the number of acres claimed by each under the 4th article of the treaty of Washington, and the value of improvements thereon.

Names.	Acres.	Value.
Thomas Russell.....	209	\$700 00
John Russell.....	84	600 00
Job Everett.....	52	275 00
John L. Higgins.....	38	-----
Joseph Barnes and Ward.....		
S. & J. Barnes.....	55	300 00
Patrick Flannery.....	33	30 00
Thomas Flannery.....	83	550 00
George White.....	192	700 00
George Dean.....	45	250 00
Joseph Fisher.....	216	400 00
Samuel Dean.....	139	532 00
Martin Murray.....	30	100 00
John Sterling.....	97	575 00
John McDonald.....	84	375 00
Henry Hurd.....	116	275 00
William Lundy.....	101	275 00
Michael McKinney.....	118	400 00
	1,692	6,337 00

VARIATION OF BOUNDARY LINE.

A further claim is presented for indemnity for a quantity of land which was lost to the proprietors by the adoption in the treaty of Washington of a conventional line from the monument at the head of the St. Croix, bearing westward from the direct north line required by the treaty of 1783.

By the treaty of 1783 the boundary of the two countries was to be a line drawn from the source of the St. Croix "directly north" to the highlands. By the treaty of 1814 it was provided that commissioners should be appointed to ascertain and determine the points mentioned, &c.

The point to be regarded as the "head of the St. Croix" was fixed upon by the two governments in 1794, and a monument was erected to mark the spot. The "direct north" line from that point was never surveyed and marked by the two governments, although some attempts were made for that object. In 1804 surveyors, under the direction and authority of the State of Massachusetts, ran and marked a north line—up to which the State made sundry grants of land—which line corresponds very nearly with that run in 1840 by Major Graham, of the United States topographical engineers, and which is, without doubt, the true line of the treaty of 1783. The line adopted by the treaty of Washington of 1842 did not pretend to be the old treaty line, but a conventional line run and marked by an exploring party sent

out by the joint commission appointed under the *treaty* of Ghent, but never claimed by either party as being the recognized treaty line.

The proposition to adopt this new line was made by Lord Ashburton to Mr. Webster in his letter dated June 21, 1842, in which he proposes, "without at all doubting the accuracy" of Major Graham's line, to adopt the "exploring line," as being better established and recognized. And to this proposition of the British minister Mr. Webster assented, notwithstanding the Maine commissioners remonstrated against it, in a letter addressed to Mr. Webster, dated July 16, 1842, in which they inform him that the proposed line would "cut off a portion of the grants made long before by Massachusetts; that it was well known not to be the true line; and that it would take from Maine a strip of territory nearly a mile wide where it crosses the St. John's, and diminishing in width until it came to a point at the monument. The quantity of land lost to individual proprietors by this change in the line is represented to be about ten thousand acres, for which indemnity is asked.

Diagrams of the towns, portions of which were thus cut off, with affidavits of surveyors of the number of acres lost, with some other testimony in relation thereto, have been exhibited, and are submitted with the papers in these cases.

All of which is respectfully submitted.

N. C. TOWLE,
Agent, &c.

TESTIMONY IN RELATION TO THE POSSESSORY CLAIMS.

Statement of David O. Parks.

I, David O. Parks, of Eaton grant, of lawful age, depose and say: That I came on to the grant in 1826, then in the sixteenth year of my age. The lot now occupied by Abel Humphrey was then improved by my brother Moses. He had made a chopping on it of about an acre. He lived with my father. He was drowned the next year. It was called afterwards the Parks claim, and we considered it as belonging to the family. It was in consequence of our claim that nobody took possession of it. I left home in 1835. In 1838 I found Abel Humphrey in possession of it. My brother left no family of his own.

Question by Dr. Towle. What is the present value of the improvements on the Abel Humphrey lot?

Answer. About three hundred dollars.

Question by same. What was the value of those improvements in 1842?

Answer. I think the improvements then were not as valuable as at the present time.

In 1842, on the half of the Lawrence Kelly lot, bought by Stephen Sands, there was a clearing of six acres, and a log-house on one part; and a clearing of ten acres and a log-house on the other part. The houses were new, and worth about forty dollars each.

When I left home, in 1835, the lots now occupied by John Murphy and William Upton were occupied by Thomas Ellenwood. He had a wife, and lived on them, and was taking off crops.

The clearing and possession of Mr. House was made before I left home in 1835, and has been kept up to this time since 1838.

In 1838, when I returned home, Patrick Finland was living on the lot he now occupies. That possession was occupied when I left home, and was one of the oldest possessions on the grant.

At the time of the treaty, on the lot now occupied by Patrick Finland, there were eight acres, or more, cleared, and a log-house and barn.

DAVID O. PARKS.

STATE OF MAINE, *Aroostook*, ss :

Taken and subscribed before me this 15th day of September, 1856.

N. C. TOWLE,

Agent of United States Senate to take proof, &c.

Statement of Charles Buber.

I, Charles Buber, of letter H., testify and say: That in 1828 I and my brother David settled on adjoining lots in Plymouth grant, and continued to occupy it till about 1840, when we both sold to John B. Wenig. My lot is now occupied by Joseph B. Fisher. In my sale to Wenig I reserved a half acre for a graveyard. My brother's lot is now occupied by Samuel Deane and George Deane. It has been continuously occupied since my brother sold it. The northerly portion of the lot occupied by Samuel Deane was derived from one White's possession, but the largest portion of it was my brother's possession.

CHARLES ^{his} + BUBER.
mark.

I also depose and say that George Murghussen followed House in the possession and improvement of the House lot.

CHARLES ^{his} + BUBER.
mark.

I also depose and say that more than twenty years ago Antony Keane bought of Nathaniel Churchill, for ten pounds, a possession which includes the lot now occupied by Patrick Finland, to whom Keane sold.

CHARLES ^{his} + BUBER.
mark.

STATE OF MAINE, *Aroostook*, ss:

Taken and subscribed before me this 15th day of September, 1856.

N. C. TOWLE,

Agent of United States Senate to take proof, &c.

Isaac Smith's statement.

I, Isaac Smith, of Plymouth grant, depose and say: That my brother-in-law, George Redicker, bought of William Everett a part of the House possession, and sold the same to Richard Jordan.

In 1844 I purchased of William Everett the lot I now occupy, which then included a lot I sold in 1853 to Samuel Sands. This was a part of a possession of Daniel Turner, which is one of the oldest possessions on the grant. The part I sold to Samuel Sands was as old a possession as the part I retained. Last summer I purchased of him. In the report of the Maine commissioners the part I retained is set down as possessed six years before the treaty, but the Sands part is put down as a later possession. This is a mistake.

ISAAC SMITH.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 15th day of September, 1856.

N. C. TOWLE,

Agent of United States Senate, &c.

Memorandum.—Richard Jordan produced a deed from George Redicker.

John Murphy's statement.

I, John Murphy, of Plymouth grant, depose and say: That the House possession in 1842 was occupied by George Murghesson, a Scotchman. He was my next neighbor. He then had a clearing of about twelve acres, and a house and barn. When he moved away, about nine years ago, he sold what he retained of the possession to Cornelius Gambeen. I have heard that he had before sold a part to William Everett. Gambeen sold to Hiram Hall, who sold to William Haley, who has since sold to John Buber.

JOHN ^{his} + MURPHY.
mark.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 15th day of September, 1856.

N. C. TOWLE,

Agent of United States Senate to take proofs, &c.

Memorandum.—Mr. John Buber exhibited a deed in due form from William Haley of lot 21, as described in report of Maine commissioners.

Statement of Patrick Conley.

, Patrick Conley, of Eaton grant, of lawful age, depose and say: at I sold a possession six years ago to Edward and James Doyle,

for six hundred and fifty dollars. The improvement was worth at least as much in 1842. I came on to the grant about the year 1830. There were then only two or three settlers. There had been no cutting of timber except the winter before I came. The timber then cut was on the brow of the river. After I came there was a good deal of cutting by people from New Brunswick.

PATRICK ^{his} + CONLEY.
mark.

GEORGE M. WESTON, witness to the signature of Patrick Conley.

STATE OF MAINE, *Aroostook*, ss :

Taken and subscribed before me this 13th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of James Doyle.

I, James Doyle, of letter H. plantation, in the State of Maine, of lawful age, depose and say: That in company with my brother Edward, I purchased in 1850 the possession of forty-three and three-quarters acres, in the Eaton grant, of Patrick Conley, for six hundred and fifty dollars. The possessions in that quarter will not sell for so much money as when I purchased, and were not so high in price when I purchased as they were ten years before.

The settlers and occupants on the Eaton and Plymouth grants, in consequence of the doubts and uncertainty as to obtaining their titles under the treaty of Washington, have not increased their improvements since 1842, but they have, in fact, become less valuable by the decay of buildings and the wearing out of clearings.

JAMES DOYLE.

AROOSTOOK, ss :

SEPTEMBER 13, 1856.

Personally appeared James Doyle, and made oath that the above statement by him subscribed is true.

Before me:

N. C. TOWLE,
Agent U. S. Senate, authorized to take proof in certain cases.

Statement of James Walton.

I, James Walton, of Eaton grant, of lawful age, depose and say: That my deed from my step-father, Stephen Sands, of about one-half of the possession which he purchased of Lawrence Kelley, was burnt up when my house was burned, which is the reason I am not able to produce it. I have been in possession under the deed fourteen or fifteen years.

JAMES ^{his} + WALTON.
mark.

STATE OF MAINE, *Aroostook, ss* :

Taken and subscribed before me this 13th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of Patrick Kelley.

I, Patrick Kelley, of Eaton grant, of lawful age, depose and say : That my brother, Lawrence Kelley, sold about half of his original possession to Stephen Sands, who sold a part of it to his step-son, James Walton, and another part to Cornelius Gampeen, who afterwards sold to James Walton. The half sold by my brother to Sands had been occupied and claimed by him as long as the half which he retained.

PATRICK ^{his} + KELLEY.
mark.

I know the facts above stated by Patrick Kelley to be true.

WILLIAM BUBER.

STATE OF MAINE, *Aroostook, ss* :

Taken and subscribed before me this 13th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of John Noland.

I, John Noland, of Plymouth grant, depose and say: That I sold to Patrick Finland the lot he afterwards sold to John Murphy and James Shay. I was in possession of it about one year. I bought of Antony Keane, who had been in possession fully five or six years before I bought. I am one of the first settlers on the river, and lived at that time about three miles below the lot. I do not know how long Patrick Finland kept the lot before he sold to Murphy and Shay.

JOHN ^{his} + NOLAND.
mark.

STATE OF MAINE, *Aroostook, ss* :

Taken and subscribed before me this 15th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of John Murphy.

I, John Murphy, of Plymouth grant, depose and say: That I bought the possession of the lot I now occupy of Patrick Finland a

short time, not more than a year, before the treaty. Patrick Finland was then in possession. On my lot, in 1842, there was no improvement except a log-house, which I built. I bought, with James Shay, what had been one lot of Patrick Finland. In dividing with Shay, I took the part on which there was no improvement. The part falling to James Shay in the division is now occupied by William Upton. On this part, at that time, there were about four acres under grass, six other acres felled, and no buildings of value.

JOHN MURPHY.

STATE OF MAINE, *Aroostook*, ss:

Taken and subscribed before me this 15th day of September, 1856.

N. C. TOWLE,

Agent U. S. Senate to take proof, &c.

Statement of Patrick Conley.

I, Patrick Conley, of Eaton grant, of lawful age, depose and say: That the possession of Frank Gallahar, afterwards purchased by Dennis Hale, was commenced four or five years after my settlement on the grant, which was made in December, 1829, as I am now able to fix the date from an examination of my papers. Gallahar did not work on the lot all the time, but claimed it, and it was called his lot. At the time of his sale to Dennis Hale he was living at the mouth of Aroostook river.

his
PATRICK + CONLEY.
mark.

STATE OF MAINE, *Aroostook*, ss:

Taken and subscribed before me this 13th day of September, 1856.

N. C. TOWLE,

Agent U. S. Senate to take proof, &c.

Statement of Patrick Kelly.

I, Patrick Kelly, of Eaton grant, of lawful age, depose and say: That when I settled on the grant there was a possession occupied by Frank Gallahar, afterwards purchased by Dennis Hale. Dennis Hale did not take a deed from Frank Gallahar until about 1840, but had purchased and occupied a considerable time before, although he had not completed his payments. I settled on the grant twenty-one years ago last July.

his
PATRICK + KELLY.
mark.

STATE OF MAINE, *Aroostook*, ss :

Taken and subscribed before me this 13th day of September, 1856.

N. C. TOWLE,

Agent U. S. Senate to take proof, &c.

Testimony of Dennis Hale.

I, Dennis Hale, of Eaton grant, of lawful age, depose and say: That in the year following the Aroostook war—I mean in the spring after the winter of that war—I bought Francis Gallahar's possession on said grant, and moved on to it. I paid him twenty-five dollars for it. He was then living with his wife's friends, at the mouth of the Aroostook river. His possession appeared to be six or eight years old when I bought it. It was called Gallahar's improvement in the neighborhood. The Gallahar possession covered the lot now occupied by me, the lot occupied by my son, Elisha Hale, and the east half of the lot occupied by James Keagan. My son Elisha derives his title from me directly. James Keagan derives his title from me through my step-son, Hyell Rockwell. I was born in Ireland, and naturalized about seven years ago.

DENNIS ^{his} + HALE.
mark.

STATE OF MAINE, *Aroostook*, ss :

Taken and subscribed before me this 13th September, 1856.

N. C. TOWLE,

Agent U. S. Senate to take proof, &c.

Statement of James Giggey.

I, James Giggey, of Plymouth grant, of lawful age, depose and say: That the lot on said grant occupied by Patrick Finland was occupied twenty-five or twenty-six years ago, when I came to settle on the grant. It was then occupied and improved by Antony Keane, of whom Patrick Finland purchased the possession, about the time of the Aroostook war. Antony Keane continued to crop and occupy the lot until he sold out to Patrick Finland. Antony Keane and Patrick Finland are both Irish born.

JAMES ^{his} + GIGGEY.
mark.

STATE OF MAINE, *Aroostook*, ss :

Taken and subscribed before me this 13th September, 1856.

N. C. TOWLE,

Agent United States Senate to take proof, &c.

Statement of Abel Humphrey.

I, Abel Humphrey, of Eaton grant, of lawful age, depose and say: That in 1838 I moved on to the Moses Parks possession. I consulted the Parks family, and was assisted in settling by George Parks, a brother of Moses. The father of Moses was an old man, and transacted little or no business. The mother of Moses principally managed the affairs of the family. I asked and obtained her permission to go on to the lot.

In 1842 the clearing on the Dennis Hale lot was about fifteen acres; on the Elisha Hale lot about six acres. They both had log-houses and barns.

his
ABEL + HUMPHREY.
mark.

STATE OF MAINE, *Aroostook*, ss:

Taken and subscribed before me this 15th of September, 1856.

N. C. TOWLE,

Agent United States Senate to take proof, &c.

Copy of Resolve of Maine of August 9, 1849.

RESOLVE in favor of certain settlers upon the public lands.

Resolved, That the land agent is hereby authorized to convey a lot of land, not exceeding one hundred and twenty acres, to each of the settlers upon lands of this State, in the territory formerly in dispute between the United States and Great Britain, who has not heretofore received land under the treaty of Washington, whenever he shall produce satisfactory evidence of being actually settled on said lot at the date of the aforesaid treaty; and whenever the land agent of Massachusetts shall be authorized to unite in said conveyance, he is further empowered to join said agent in the execution of deeds to all persons producing satisfactory evidence of having been settled as aforesaid on the joint lands of the States of Maine and Massachusetts.

TESTIMONY IN RELATION TO THE LOSS OF TIMBER.

Testimony of George Grantham.

I, George Grantham, of Presque Isle, of lawful age, depose and say: That I came on to the Aroostook river in 1834, and settled on a lot in township G, about a mile above the Eaton line. After living there two years, I moved further up the river to township 13, in the 4th, where I lived ten years. My travel was up and down the river in boats to obtain my supplies, &c. I averaged making the journey twelve times in a year. In the winter I travelled on the ice on the

river. In the winter of 1834-'35 there was a large operation on the Plymouth and Eaton grants by the two brothers Brown, who lived then and live now between the mouths of the Aroostook and Tobique. The following year there was a large operation by Thomas Sutherland, a province man, then residing on the Plymouth grant. Sutherland cut two years. I recollect, among other operators, one Wolverton, who cut on the Little Madawaska, who then lived on the St. John's; the Burselys, province men, now living at the Grand Falls; the Rogerses, of Woodstock, and Hallingwood Murphy, in 1834-'35, then living on the St. John's river. There were heavy operations every year until the posse came on in the winter of 1838-'39, and some operations then going on were broken up by the posse. During all this time the jurisdiction on the Aroostook river was wholly exercised by the province authorities. McLaughlin, the British warden, collected a duty of eight shillings, province money, per ton on all timber cut on the Aroostook. He was up the river two or three times every year, taking an account of the cuttings, and the province merchants who supplied the operations gave bonds to be responsible for the duty. He always forbid the cuttings, but the understanding was that he did so only as a matter of form, and, in fact, if the duty was paid, there was no opposition to the cuttings, or to the sale of the timber in the province. No jurisdiction was asserted by Maine until 1839, and no claims interposed by or on behalf of the United States proprietors.

I have been a practical lumberman in this region since 1819. I have been over the Eaton and Plymouth grants. In my judgment they would have cut, in a state of nature, one ton of large merchantable pine and 1,000 feet, board measure, of logs to the acre.

From 1834 to 1839 the stumpage we paid on the river was \$1 60 per ton, being the eight shillings (province currency) which we paid to the British warden as a duty.

In the winter of 1832-'33 I cut on the St. Francis, and in the spring of 1833 I paid this duty to the agent of McLaughlin. It was understood in the county that after the Dutch award was rejected some arrangement was made by which the province authorities were authorized to collect this duty.

Question by Dr. Towle.—How much timber had been cut on Eaton and Plymouth before you came on to the Aroostook?

Answer.—Not much. The settlements had been just commenced on the river. There were on it at that time only three horses and very few oxen. It was about this time that the timber began to fail on the Tobique, and attention began to be turned to the Aroostook. If there had been no interference by the British authorities in collecting duty, the cuttings would have been larger.

Question by Dr. Towle.—What assertion, if any, of private ownership over the Eaton and Plymouth was made prior to 1839?

Answer.—In 1835 a Mr. Spear, of Boston, came on and stopped at my house, claiming to represent the owners. I understood that he took down the names of the settlers.

Question by Dr. Towle.—Did the lumbermen cut lumber wherever they found it, without regard to ownership?

Answer.—They did. The only obstruction was the duty collected by the British authorities.

Question by Dr. Towle.—How much timber was taken from those grants from 1834 to 1839?

Answer.—A great deal, but I cannot tell how much. The operations of 1834, 1835, and 1836 took off the cream of the timber. Not much of the log timber had been taken in 1839. In my judgment two-thirds of the ton timber had then been taken off.

GEORGE GRANTHAM.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 17th day of September, 1856.

N. C. TOWLE,

Agent United States Senate, &c.

Statement of Stephen B. Pattee.

I, Stephen B. Pattee, of Section D, (Fort Fairfield,) of lawful age, depose and say: That I went on to the Aroostook river in January, 1839, with the civil posse, and remained about fifteen months. I commenced the erection of my mills at Fort Fairfield in 1842, and have lived there since. In 1854, in company with Mr. Whidden, under commission from the State of Maine, I appraised the value of certain settlers' improvements on the Eaton and Plymouth grants. The third commissioner, Mr. Hutchinson, was not present at the appraisalment, but concurred in it subsequently. Our appraisalment was based upon a personal examination of the lots, and included improvements of land as well as buildings. We found, as a general rule, that our appraisements agreed with the values of the improvements, as estimated in the neighborhood.

These improvements, with a few exceptions, have not been increased since my residence at Fort Fairfield, the settlers being discouraged by the condition of their titles.

Farms in my vicinity, and generally through Aroostook county, have depreciated in price since the period of say five years after the Aroostook war. There was then a disposition to emigrate into the county, and farms could be readily sold for cash. Since about 1845, the tendency has been to emigrate to the western States, and the selling price of our agricultural property has depreciated about one-third.

In 1842 the selling price of State settling lands was one dollar per acre. At that time, if the proprietors of the Eaton and Plymouth grants had compromised with the settlers at two dollars per acre for the original value of the soil, independent of the timber which had been taken off, and independent of the improvements, it would have been a fair adjustment. This would have been a double price, in consequence of the settlers having taken the lots fronting on the river. In 1839 the pine timber had been mostly taken from both the Eaton and Plymouth grants. They were originally well timbered with pine.

That timber, if now standing, could be sold for one-half of the proceeds of the sale of it delivered at St. John. The average price of timber of that character at St. John during the last four years has been about nine dollars a ton.

When I went on in 1839 with the civil posse, we found trespassing actually going on upon both the Eaton and Plymouth grants. The principal trespasser was Plummer, who had got out from Plymouth about fifteen hundred tons.

In 1854 and 1855 I was a member of the house of representatives of Maine. In 1849 I was appointed deputy collector and inspector at Fort Fairfield by the United States collector at Passamaquoddy.

From 1839 to 1842 pine timber which would now sell at St. John at nine dollars per ton would have sold at about six dollars per ton. [This was an answer to question by Dr. Towle.]

Question by Dr. Towle. What would have been a fair and just price for the settlers to have paid the proprietors in 1842, in order to have obtained a fee-simple title to their possessions?

Answer. Two dollars per acre.

Question by Dr. Towle. Do you think that the value of the improvements has increased, or otherwise, since 1842?

Answer. It has not increased. The choppings have been enlarged, but the former clearings have been neglected and are depreciated.

Question by Dr. Towle. Did the sums given in your report as the value of the improvements include the value of the soil?

Answer. They did not.

Question by Dr. Towle. Upon what principles did you make your appraisal of improvements?

Answer. We appraised them at the rates at which similar improvements were bought and sold in that vicinity. We made a particular examination of the buildings and clearings in each case.

Question by Dr. Towle. How would the value of the improvements commenced prior to 1842, but not as early as 1836, compare per acre with the value of the improvements commenced as early as 1836?

Answer. It would be about the same.

Question by Dr. Towle. Are the lots fronting on the river generally rated at double the value of back lots?

Answer. They are. The location is better, and the intervals on the river are considered our richest lands. I own, myself, seventy-five acres on the Aroostook river, in letter D, which I would not sell at less than twenty-five dollars per acre.

STEPHEN B. PATTEE.

STATE OF MAINE, *Aroostook*, ss:

Sworn and subscribed before me this 17th day of September, 1856.

N. C. TOWLE,

Agent U. S. Senate to take and receive proof, &c.

Statement of John McCluskey.

I, John McCluskey, of Houlton, of lawful age, depose and say: That I have resided at Houlton since 1840, and have been engaged in

lumbering on the Aroostook and St. John's. From one-third to one-half of all the lumber cut on the Aroostook is cut by me. I have stores at Fort Fairfield and Presque Isle. I have paid the past winter as high as ten dollars per 1,000 feet, board measure, stumpage for pine. A ton is equal to four hundred and eighty feet. I am acquainted with the Plymouth grant, and better acquainted with the Eaton grant. From the appearance of the stumps they must have been well timbered with pine. The pine was as large as any of the Aroostook pine, which is the largest pine on the St. John's waters. I think the Eaton grant, in a state of nature, would cut two thousand feet, board measure, of pine to the acre. I first knew the Eaton grant in 1842 or 1843. It was then pretty thoroughly stripped of its pine.

Having driven lumber several years out of the Little Madawaska, I know that there is a good and valuable mill privilege about twenty rods from its entrance into the Aroostook river in the Eaton grant. It is as good a privilege as there is on the Aroostook river.

There is a road running from Fort Fairfield up the Aroostook river, on the south bank, called the Carriban road. It runs nine miles through the Plymouth and Eaton grants. One road was built in 1850, at a cost of four thousand dollars. James A. Drew built it. The cost was assessed on the proprietors of Plymouth and Eaton. The road runs through the lots fronting on the river.

Question by Dr. Towle. How long have you lumbered on the Aroostook river?

Answer. Ten years successively.

Question by Dr. Towle. How much has stumpage risen within that time?

Answer. It has risen about fifty per cent. within that time, and from the information I have I believe that it has certainly doubled within twenty years. In the winter of 1847-'48 I bought stumpage of the State on Fish river at an average of three dollars per 1,000 feet, board measure. In 1851 or 1852 I bought about six hundred and forty acres of one Ormsby, in township H, three miles from the river, at three dollars per acre. The State has always permitted at lower rates than private proprietors. The year previous to my operations on the Fish river, above alluded to, I paid the State on the same place two dollars and fifty cents per ton, which is equal to more than five dollars per 1,000 feet, board measure.

JOHN MCCLUSKEY.

STATE OF MAINE, *Aroostook, ss.*

Taken and subscribed before me this 17th of September, 1856.

N. C. TOWLE,

Agent U. S. Senate to take proof, &c.

Statement of Charles Buber.

I, Charles Buber, of letter H, depose and say: That I knew about the lumbering of Hopkins on the Eaton grant, about twenty-one years

ago. I do not know the quantity, but my recollection is that he got as much as four hundred tons. The winter before, Chandler and Hooper operated on the Eaton and got off not less than six or seven hundred tons. One of their logging roads is called the "Chandler road" to this day. In 1832 or 1833 Mr. Brown got about three hundred tons from the Plymouth, and hauled it to a brow opposite my house. Mr. Brown lived at the mouth of the river. The next year Hopkins and Parker hauled out to the same place about five hundred tons. The next year Thomas Sutherland hauled out at the same place about two hundred and fifty tons. I also recollect that Benjamin Gardiner made an operation about the same time. I recollect these instances of cutting, because their landings were near my place. The Plymouth was better timbered than the Eaton.

CHARLES ^{his} + BUBER.
mark.

STATE OF MAINE, *Aroostook*, ss:

Sworn and subscribed before me this 15th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement by Michael Keane.

I, Michael Keane, of Eaton grant, in the State of Maine, depose and say: That I am sixty-one years of age; was born in Ireland, and came on to the Aroostook river in 1831, by the way of New Brunswick, and settled on the Eaton grant, where I have lived ever since. I was never naturalized as a citizen of the United States. In 1831 there were about twenty families on the Aroostook river. On the Eaton grant Patrick Conley, and Lawrence Kelly, and Jonathan Parks, and Daniel O. Parks were living when I came, having come in three years before. When I first knew the grant but very little pine timber had been cut off, and there were large amounts standing. The cuttings, when I came on, were confined to a few lots on the river. From 1831 to the time of the Aroostook war the quantity of pine cut was large—say eight thousand tons, perhaps more, perhaps not so much. The quality was the best in this region. At the time of the Aroostook war the grant had been pretty much stripped of its pine.

The improvements on the Eaton grant, on the old improved lots, have not increased, but the contrary, within the past fifteen years, the settlers being troubled and discouraged about their titles.

MICHAEL KEANE.

AROOSTOOK, ss:

SEPTEMBER 13, 1856.

Personally appeared Michael Keane, and made oath that the foregoing statement by him subscribed is true, according to the best of his knowledge and belief.

Before me,

N. C. TOWLE,
Agent U. S. Senate, authorized to take proof in certain cases.

Statement of Patrick Kelley.

I, Patrick Kelley, of Eaton grant, of lawful age, depose and say : That I bought a possession and settled on the grant twenty-one years ago last July. The winter before I settled there had been a large lumbering operation on the grant, supplied by Mr. Tibbats, of Tobique, New Brunswick. From that time down to the Aroostook war there was a great deal of cutting by the province people, by the settlers, and others. There were operations going on at the time of the war, which were broken up at that time. I cut, myself, with others. We did not know under whose government the territory would fall. From the appearance of the standing timber and of the stumps when I settled here, the Eaton grant and the Plymouth grant had been well timbered. Before I came, permits to cut timber on them had been given by the authorities of New Brunswick. We never heard of any claims of United States proprietors until after the Aroostook war. On the old improvements but little has been done of late years, on account of the uncertainty of getting our titles under the treaty of Washington.

PATRICK ^{his} + KELLEY.
mark.

GEORGE M. WESTON,

Witness to the signature of Patrick Kelley.

STATE OF MAINE, *Aroostook*, ss :

Taken and subscribed before me the 13th of September, 1856.

N. C. TOWLE,
Agent, &c.

Statement of William Buber.

I, William Buber, of Eaton grant, of lawful age, depose and say : That I have lived on said grant since July, 1839. I first came on to the Aroostook river in 1827. There were then two or three families on the grant. The forests were untouched, and there were large amounts of spruce and pine timber standing on the shores. In 1839 this timber had been mostly stripped off from the front and back lots.

On the old improved lots on the Eaton and Plymouth grants but little has been done during the last fifteen years, on account of the disputed title. Drew and Mansur, and other proprietors, have claimed it, and we have had no heart to do much. We have talked it over among ourselves, and concluded it was not safe to lay out much until our rights were settled under the treaty of Washington.

WM. BUBER.

STATE OF MAINE, *Aroostook*, ss :

Taken and subscribed before me this 17th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proofs, &c.

Statement of Lawrence Kelley.

I, Lawrence Kelley, of Eaton grant, of lawful age, depose and say : That I knew of the commencement of Francis Gallahar's possession. He took off two crops. He then lived at Patrick Conley's house. I heard of his sale to Dennis Hale, perhaps eight years after the commencement of his possession. The possession was always called Gallahar's possession, and he was understood and recognized as the owner.

Of my own possession I sold the up-river half to Stephen Sands. I had occupied and improved the part I sold to Sands as fully as the part I retained. He paid me a cow, reckoned at that time at forty dollars.

The improvements on the old possessions on the Eaton and Plymouth grants have gained little, if any, during the past fifteen years, the settlers being discouraged by the uncertainty of their titles.

I settled on the Eaton grant about twenty-seven years ago. There was then a large amount of pine timber on both Eaton and Plymouth. The front ridges on the river were then covered with pine. It was cut off every year from that time to the time of the Aroostook war by settlers and people from the province. Mr. Tibbatts, Mr. Hopkins, Abraham Hammond, and Mr. Giverson, of Tobique, I recollect as operating. Mr. Tibbatts was the largest operator. He furnished the settlers with supplies to operate with, and bought all the settlers would haul to the banks of the river. No opposition was offered to those operations by American proprietors. The only person who asserted any right of control over the premises was Mr. McLaughlin, the British warden of the disputed territory. After the Aroostook war these operations were broken up. During the winter of that war Mr. Plummer was operating on Plymouth with twelve horses. His teams were broken up by the civil posse of Maine. At the time of the Aroostook war Eaton and Plymouth were pretty thoroughly stripped.

LAWRENCE ^{his} + KELLEY.
mark.

STATE OF MAINE, *Aroostook*, ss :

Taken and subscribed before me this 13th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of David O. Parks.

I, David O. Parks, of Eaton grant, depose and say : That in May or June, 1835, I was employed by three gentlemen to explore the grant for timber. I do not recollect their names, but my impression is that they lived in the western part of Maine. I spent two days with them, cruising through the timber. Our judgment was that the pine

timber suitable for ton timber would average about a quarter of a ton per acre. We estimated no pine except for ton timber. There had been a good deal cut off before. When I returned home in 1838, this timber had been principally removed. The Plymouth grant was much better timbered with pine than the Eaton grant. We estimated on the Eaton that the timber standing, if sound, would average half a ton per acre. We made an allowance of one-half for rots.

DAVID O. PARKS.

STATE OF MAINE, *Aroostook, ss* :

Sworn and subscribed before me this 15th day of September, 1856.

N. C. TOWLE,

Agent U. S. Senate to take proof, &c.

Statement of Elijah L. Hamlin.

I, Elijah L. Hamlin, of Bangor, of lawful age, depose and say : That in the year 1838 I was land agent of Maine. In the spring of that year I sent Colonel Eben Webster to report upon the trespassing upon the Aroostook and St. John's rivers. In the fall I visited the Aroostook river myself, and when I returned left an agent (Mr. Buckmore) to look after the interests of the State. The reports of Colonel Webster and Mr. Buckmore have been published. I saw myself operations in timber going on at various points as I passed down the Aroostook river, and particularly upon the Plymouth township. Prior to 1838 the jurisdiction of the State had not been exercised for some time as far north as the Aroostook, and was then resisted by Mr. McLaughlin, calling himself the British warden of the disputed territory, on the ground that, by an arrangement between the governments of the United States and Great Britain that region was to remain under the control of New Brunswick until the boundary dispute was settled. In the winter of 1839, however, the jurisdiction of the State against trespassers was maintained by civil and military force.

In the summer of 1842 I was three months at Fort Fairfield. My principal object in remaining there was to ascertain, by examination and inquiry, the condition of the lands and timber upon the Aroostook river, with a view to purchases. With the exception of remote tracts of land, I found that very little valuable timber was left. Of the Plymouth township, which adjoins the township in which Fort Fairfield is situated, I made a particular examination, at the request of Frederick Hobbs, esq., who was the agent and attorney of parties interested in the ownership. I reported to Mr. Hobbs the condition of the township and my opinion of its value. I found the township substantially stripped of its pine timber, and the accessible lots on the river in possession of squatters. Under the circumstances, I advised Mr. Hobbs that his clients would do better to abandon the township than to pay taxes upon it.

ELIJAH L. HAMLIN.

STATE OF MAINE, *Penobscot, ss:*

October 17, 1856, personally appeared Elijah L. Hamlin, and made oath that the foregoing statement by him signed contains the truth, according to his best knowledge and belief. Before me,

THOMAS N. GUMSEY,
Justice of the Peace.

Statement of David O. Parks.

I, David O. Parks, of Eaton grant, of lawful age, depose and say : That two, three, or four years before the Aroostook war, Daniel Hopkins, of Andover, New Brunswick, made a lumbering operation on the Eaton grant, and took off, according to my best recollection, six hundred tons of pine timber.

DAVID O. PARKS.

STATE OF MAINE, *Aroostook, ss:*

Taken and subscribed before me this 13th September, 1856.

N. C. TOWLE,
Agent United States Senate to take proof, &c.

Statement of James Rogers.

I, James Rogers, of Plymouth grant, of lawful age, depose and say : That I have lived on the grant about twenty-three years. When I first came there was a large amount of pine, of good quality, on the Eaton and Plymouth grants. At the time of the Aroostook war the greater part had been taken off. The operations were supplied chiefly by the province people. The British squadron had officers to look after it and collect a province duty of eight shillings per ton. Before the Aroostook war there was no claim asserted of any United States proprietors, to my knowledge.

In reference to my possession, I have not been inclined to increase my improvements from the uncertainty of obtaining title under the treaty of Washington ; and I believe that others have been restrained from improvements from the same consideration ; but, notwithstanding this, it is my judgment that the improvements have been increased since 1842.

JAMES ROGERS.

I also state, I knew of the commencement of Mr. House's possession, now occupied by Richard Jordan and John Buber, who bought of William Haley. The possession was commenced, I think, as early as 1834. I believe it has been improved ever since.

In 1842, to the best of my recollection, there was on this possession a clearing of as much as eight acres, and a log house and barn.

JAMES ROGERS.

STATE OF MAINE, *Aroostook*, ss:

Sworn and subscribed before me this 15th day of September, 1856.

N. C. TOWLE,

Agent United States Senate to take proof, &c.

MINORITY REPORT.

Mr. HOARD, from the Committee of Claims, submitted the following views of the minority:

The minority of the Committee of Claims, to whom was referred the petition of George M. Weston, the commissioner of the State of Maine, differing from the conclusions arrived at by the majority of your committee, beg leave to submit the following views:

This claim comes before Congress upon the petition of the said Weston, who, representing himself as the commissioner from the State of Maine to present the claims of that State under the fourth article of the treaty of Washington, says:

“The government of the State of Maine has instructed the undersigned, while prosecuting her [its] own claims (amounting to \$——) for pecuniary indemnity for lands conveyed and to be conveyed under the treaty to settlers and holders of British grants, to ask the adoption by Congress of some comprehensive measure which shall, with the least possible delay, quiet all questions between proprietors and occupants in a territory whose growth and development have been so long retarded by controversy in respect to the northeastern boundary of the United States.”

The fourth article of the treaty of Whashington, under the provisions of which this claim is presented before Congress, is in the following words, to wit:

“All grants of land heretofore made by either party within the limits of the territory which by this treaty falls within the dominions of the other party shall be held valid, ratified and confirmed to the persons in possession under such grants, to the same extent as if such territory had by this treaty fallen within the dominions of the party by whom such grants were made; and all equitable possessory claims arising from a possession and improvement of any lot or parcel of land by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this treaty, shall in like manner be deemed valid, and be confirmed and quieted by a release to the person entitled thereto of the title to such lot or parcel of land, so described as best to include the improvements made thereon; and in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them, respectively, which has heretofore been in dispute between them.”

Under this article the State of Maine claims that “questions between proprietors and occupants” of land have arisen which should be quieted by the Congress of the United States. The occupants here alluded to are or were British subjects, who had squatted upon the lands of the citizens of Maine, and most of whom had been in posses-

sion of the same more than six years prior to the date of the treaty of Washington, and now claim to have such possession "confirmed and quieted by a release" from the persons holding the legal title; or, in other words, it is claimed that parties having no legal or equitable title to land have been constituted landed proprietors by virtue of this article of the treaty, and that legal owners have been divested of their titles by the same operation.

The minority of your committee can never give their assent to a proposition they regard as monstrous, if not absurd. They utterly deny that the article of the treaty referred to was ever intended to create any new rights; its sole purpose being, in their opinion, to protect and secure rights previously existing. The reference in the treaty to "equitable possessory claims arising from a possession and improvement of any lot or parcel of land for more than six years," originated with the commissioners on the part of Maine and Massachusetts, who were the controlling parties in having the fourth article inserted in the treaty. Knowing that there was a *statute* law of Maine which did create equitable rights on the part of her citizens who had been in possession of land for more than six years, and that some of these citizens would be thrown by the new boundary line into the province of New Brunswick, it was the purpose of these commissioners to protect those rights. Hence the fourth article of the treaty, by the provisions of which all grants were to be held valid, *precisely to the same extent* as if such territory had fallen within the dominions of the party by whom such grants were made; and all equitable possessory claims arising from a possession and improvement of any lot or parcel of land for more than six years were to be held valid *in a like manner and to the same extent, and no further*. The party should suffer no injury from a change of jurisdiction. If citizens of Maine possessing an equitable claim to the land they had improved, under the liberal provisions of her statutes, this claim was to be respected, deemed valid, and be confirmed and quieted to the persons in possession, although they should fall within the province of New Brunswick. And, *vice versa*, if, under the provincial statutes of New Brunswick, British subjects had acquired equitable claims by a possession and improvement for more than six years of any lots or parcels of land, these claims should likewise be respected, deemed valid, and be confirmed and quieted, to the persons holding this equity, although they fall within the jurisdiction of Maine, precisely as they would have been respected and confirmed had the territory fallen within the jurisdiction of New Brunswick. Indeed, Mr. Webster himself, in a letter to Lord Ashburton, settles this point conclusively. He says: "Provision should also be made for quieting and confirming the titles of all persons having claims to lands on either side of the line, whether such titles be *perfect or inchoate* only, and to the *same extent in which they would have been confirmed by their respective governments had no change taken place*." Such was the evident purpose of the negotiators, such the full scope of the 4th article of the treaty. It follows, then, if these squatters acquired no equitable claim to the land in their possession under the laws of New Brunswick, they have not the shadow of a claim under the 4th article of

the treaty of Washington, and are not entitled to a confirmation, or to have a "release of title." It is not pretended by the State of Maine that these occupants ever acquired any equitable claim under the jurisdiction and laws of New Brunswick, or that they had ever paid that province or any one else a single dollar for the land to which they now claim absolute title in fee under the operation of the said 4th article of the treaty.

In 1848 the Hon. Joseph R. Ingersoll, chairman of the Judiciary Committee in the House of Representatives, made an able report, in which he discussed the equity of the claims of those persons holding possession of lots of land within that portion of the disputed territory falling within the State of Maine. In this report he states that the provision for equitable possessory claims is understood to apply to cases where the owners of the land, now a part of Maine or Massachusetts, have paid the purchase money to the British government. This basis for an equity, and the only one which the minority of your committee can perceive, was approvingly quoted by Mr. Bradbury, of Maine, in a subsequent report to the United States Senate on the same subject.

The commissioners who were engaged in negotiating the treaty, being called on for their testimony in support of this claim of Maine, state that there was to be something more than mere possession to entitle the occupant to a grant of land. They say: "The commissioners were anxious to have these men feel when they came under the full and undisputed jurisdiction of the United States and of Maine, that they would neither be dispossessed of their property or *equitable* rights." No one seems to have dreamed that every person found in possession of land, where that possession had continued for more than six years, was to have an absolute fee simple title presented him by the government. Had such been the strange purpose of the negotiators to create rights for the benefit of the mere squatters, unknown to the laws of either Maine or New Brunswick, and not asked for in their behalf by either government, the treaty would have read very differently. It would have provided that "all persons in possession of any lot or parcel of land for more than six years before the date of this treaty shall be quieted in the same by a release," &c. It would not have limited the occupant to such rights as he would have had under his own government, nor used the terms "*equitable* possessory claims," unless there had been possessory claims, with no equity in them, and which it was the purpose of the treaty to exclude from the operation of the fourth article. The only equitable claim on the part of the squatter, recognized even by the statutes of Maine, is to the *value of his improvements* after the six years possession, and not to the fee in the land without payment to the rightful owner. An equitable title is defined to be "such a title as may be recognized by a court of equity." Have the New Brunswick squatters any such claim? The State of Maine does not pretend that they have, and yet Congress is called on by her to confirm these occupants in their possession, and divest the legal owners of their titles. A minority of your committee dissent from such a proposition, and deny that the treaty, *proprio vigore*, confirms title to

the beneficiaries under the fourth article, as held by the courts of Maine and the majority of this committee. The treaty itself, *in terms*, positively ignores the idea, by providing for the *manner* in which titles shall be confirmed and quieted, as did also the legislatures of Maine and Massachusetts when they proceeded to "take the necessary steps to carry out, on their part, the purposes and intentions of the fourth article."

But were it admitted, for the sake of argument, that the purpose of the distinguished negotiators was to give title to all persons who might be found squatting upon a lot of ground for more than six years, can it be imagined that this benevolent policy was to extend to the destruction of private rights, to divesting individual proprietors of their legal title for the benefit of mere trespassers; and yet such would seem to be the conclusion to which a majority of your committee have come.

Maine gave a construction to the fourth article of the treaty immediately after the negotiation had closed, and when all the facts and impressions were fresh in the mind. She did not then suppose it referred to lands already granted to individuals. Her commissioners appointed under the resolves of the legislature, approved February 21, 1843, to locate the lands embraced within this article, say:

"The undersigned are of opinion that the fourth article of the treaty ought *not* to be construed to extend to and embrace those lands which had been previously granted by the States to corporations or individuals, so as to divest the title from such grantees, and to give it to persons who had held by mere possession for more than six years before the date of the treaty."

Such was the conviction at that time of all the commissioners appointed by both Maine and Massachusetts, and they so stated in their official report, dated 25th December, 1844. This early construction of the treaty was fully concurred in by the authorities of those States, and was not disturbed for about ten years, when the courts of Maine sustained, under the first clause of the fourth article of the treaty, a grant from the province of New Brunswick as taking precedence of a grant from Massachusetts to the same land, (*Little vs. Watson*, 2 Maine, 214;) and then the legislature of Maine suddenly acquired new light on the subject, and on the 12th April, 1854, passed a resolve authorizing the appointment of another board of commissioners, consisting of Messrs. Hutchinson, Whidden and Pattee, who proceeded to survey and set off by metes and boundaries the lots now in controversy, but who, in their official report, added, as if by way of apology or excuse for such a proceeding, that "the title to said lands can be procured from the present owners of the fee for two dollars per acre." In another place these commissioners say "the proprietors of said townships are willing to release their title to said lots for a reasonable compensation, or exchange for other lands *belonging to the State*."

By the resolves of February 21, 1843, the commissioners are directed "to set off by metes and boundaries *all* grants; and also to set off to each settler so much land as he may be entitled to," &c.; and again, the land agent is authorized "to *convey* to said settlers by *deed*, such lands as may be set off," &c. This clearly shows the views of the

legislature of the State of Maine at that time. All claims were to be set off and conveyed by deed by the land agent of Maine. As this agent could only have had power to convey title to *public* land, it follows as a necessary consequence that the commissioners were confined, and properly too, according to their official report, to public lands. Such was the construction given to the fourth article of the treaty immediately after its negotiation by the commissioners of Maine and Massachusetts, as well as by the legislatures of those States. Its subsequent extension in 1854, to trespassers and squatters upon private property, was an *afterthought*, growing out of the decision of the courts of Maine before alluded to. That decision, however, was made in a case where the contest was between two legal grants, each valid within its own jurisdiction. It was merely an adjudication between claimants, neither of whom asserted *title* under the treaty. The principle laid down by the court in this case can have no application to the claim of a mere squatter or trespasser.

But let us go a step further, and for the purpose of demonstrating that Maine has not the slightest foundation for the demand she now makes upon the federal government, grant that it was the purpose of the treaty, and the intention of the negotiators, not only to secure "lots" of land to those who had no title either legal or equitable, but also to divest legal owners of title, and transfer it to the mere trespasser; yet no liability therefor rests upon the United States.

Although the United States and Great Britain were nominally the contracting parties, the real parties included both Maine and Massachusetts, who were represented throughout the negotiation by able and watchful commissioners, whose suggestions were deferred to in everything relating to their interests, and nothing was done until it had their approval. As before stated, these commissioners procured the insertion of the fourth article in the treaty for the reciprocal benefit of the settlers happening to fall on either side of the new boundary line. The commissioners of Maine required this provision to be inserted in the treaty. In their note of acceptance of the treaty they request:

"That all grants of land within that portion of the disputed territory conceded to *Great Britain*, made by Maine and Massachusetts or either of them, shall be confirmed; and all equitable possessory titles shall be quieted to those who possess the claims."

Such was the request of the commissioners of Maine, and such the provision inserted in the treaty, to secure to the citizens of Maine and Massachusetts a portion of the territory falling within New Brunswick, although these States were to receive an equivalent therefor of \$300,000 from the government of the United States. As a matter of even-handed justice to New Brunswick, for this proposed adoption of a part of her territory by the citizens of Maine, the commissioners add: "And we assent to a reciprocal provision for the benefit of the settlers falling within the limits of Maine." Here we have the whole gist of this much mooted provision. After agreeing to a surrender of the territory falling within New Brunswick, for the considerations named in the treaty, Maine demands that all grants of land and equitable possessory titles of her citizens within this territory shall be

confirmed and quieted to those in possession, and as a *quid pro quo*, proffered her assent to a reciprocal provision; she now presents herself before Congress and claims remuneration or indemnity.

The action of Maine in executing on her part the fourth article of the treaty may be considered as conclusive on the point of liability. If her "assent" to a reciprocal provision devolved any liability whatever on the United States, which Congress is in equity or good conscience bound to meet, the course pursued by these States was singularly officious. Resolutions were passed authorizing, as before stated, the appointment of commissioners to carry into effect the provisions, whose duty it was to set off by metes and bounds all grants as aforesaid; and also to set off to each settler so much land as he may be entitled to, "not exceeding, however, two hundred acres to any one individual." If the United States were to be held liable for the amount of land to be thus donated, it would appear that Congress should have had some part in the transaction. The States of Maine and Massachusetts then understood the entire responsibility to rest upon themselves, and acted upon their own judgment without consulting the federal authorities.

These resolutions proceed thus: "The land agent be, and he is hereby, authorized, in concurrence with the land agent of Massachusetts, to convey to said settlers by deed such lands as may be set off to them by the commissioners aforesaid." Thus were these lands donated, set off and absolutely conveyed by deed to the settlers, without any consultation with or concurrence on the part of the United States, wholly ignoring the idea that the federal government had any interest in the transaction, or was in the slightest degree liable to Maine for indemnity.

One of the resolutions of the legislature of Maine, however, did show a purpose to fix a liability upon the general treasury, for the third of the series is in these words:

"Resolved, That the governor be requested to present to Congress, for allowance, an account of all expenditures incurred by this State by virtue of the provisions of these resolves."

The United States having agreed in the treaty to pay certain expenses, including the expenses of Maine in defending the territory, and the expenses of surveying, &c., this charge on the part of Maine was considered within the fair interpretation of the treaty, which provides that certain specified expenses shall be paid by the United States, and the account was accordingly paid. But, at that time, not even the State of Maine thought of the general government being chargeable with the land her commissioners were setting off and deeding to the occupants, under that "reciprocal provision" of the treaty which she had, in her *justice and magnanimity*, assented to, and had inserted in the treaty.

The governor of Maine in a letter to the lieutenant governor of New Brunswick, dated March 23, 1843, says: "I have requested Mr. Eastman to proceed to Frederickton for the purpose of obtaining such information as will enable the commissioners of this State to execute, *on their part*, the provisions of the fourth article of the treaty of Washington."

Here is an official recognition of the fact that the fourth article of

the treaty not only had to be executed, and therefore did not operate *proprio vigore*, but that its execution devolved upon the States of Maine and Massachusetts and not upon the United States.

The information sought by the governor of Maine being refused him by the lieutenant governor of New Brunswick, the former addressed a communication to the Secretary of State of the United States, under date of June 16, 1843, in which he says :

"I have the honor to enclose a copy of the resolves passed by the legislature of the State of Maine at its last session, for the purpose of executing, *so far as Maine is concerned*, the provisions of the 4th article of the treaty," &c. ; and then he closes by asking the "*interference of the general government*" to enable him to procure the needed information from New Brunswick.

These quotations prove, beyond a doubt, the view taken of the question of *liability* by the authorities of Maine immediately after the negotiation, and while they were proceeding "to execute on their part" the provisions of the 4th article of the treaty. Even the assistance asked of the Secretary of State of the United States is styled by the governor of Maine an "*interference of the general government*"—a term of grave import, and here used in its broadest sense. It had not then entered the mind of any one that the interference was on the part of Maine, and that the federal government was the real party in interest, and alone responsible and liable under the 4th article of the treaty. Maine had demanded to have her grants and the equitable possessory titles of her citizens respected, though falling within the territory of New Brunswick, on condition that the favor should be reciprocated when British subjects fell within her own borders. But can it be supposed that in yielding to this demand of Maine, by which she aimed to absorb a portion of the identical territory for which she had been paid by the United States, that the latter assumed the responsibility to indemnify her for any lands she might donate and set off to occupants under the reciprocal provision assented to when presenting her demand? Was it supposed that this generous assent of Maine, freely tendered, to treat British subjects, falling within her own territory, precisely as she claimed her own citizens should be treated in New Brunswick, was to cost the federal treasury several hundred thousand dollars? This would indeed be being just if not generous at another's cost.

But a still more conclusive evidence of the fact that Maine did assume the liability incurred under the 4th article of the treaty, will be found in the second series of resolutions passed by the legislature of that State. These resolutions not only increase the amount of land donated to settlers in possession for more than six years, but authorize the commissioners of the State to charge another class of settlers under the treaty "such sum as they may deem just and equitable, and receive in payment for said land labor on the roads or cash, at their discretion." This would hardly be deemed a very dignified, if legitimate, mode of executing the provisions of a treaty, if indeed the United States were bound to confirm these possessory claims and have released to the occupants the legal title. As the agent of the United States, would Maine have undertaken to sell her own lands,

charge the occupants, and take the pay in *labor on the roads*? Acting as she did for herself, and solely in her own behalf, no one has a right to complain if her own citizens are satisfied.

It appears evident, then, to the minds of a minority of your committee, that whatever responsibility or liability has been, or may be incurred, in carrying out the provisions of the 4th article of the treaty, it rests upon the States of Maine and Massachusetts, and not upon Congress.

Secondly. That the said 4th article of the treaty was never intended to effect legal titles of proprietors, unless the person in possession held under a *grant* of the government whose jurisdiction was annulled by it.

Thirdly. That it was not the purpose of the negotiators to create new, but only to protect existing rights. They therefore insist that under the treaty of Washington, the claim of Maine now under consideration in behalf of certain of her citizens has no foundation in equity or justice, and should be rejected by Congress.

Thus far the minority of your committee have discussed only the relative liabilities of the State and federal governments, under the provisions of the *treaty*; and so far as the claim for "timber" is made *under the treaty*, it has no better standing than the claim for land, which we have attempted to show was groundless.

C. B. HOARD.

SYDENHAM MOORE.

ALFRED ELY.

JOHN A. McCLERNAND.